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THE FIRST PART OF THE INSTITUTES OF THE Laws of England.

OR,

A COMMENTARIE UPON LITTLETON,

Not the Name of a LAWYER only, but of the LAW it Self.

MARTIAL.

Quid te vana juvant miseræ ludibria Cartæ?
Hoc lege, quod possis dicere jure meum est.

CICERO.

Major hæreditas venit unicuique nostrum à Jure, & Legibus, quam à Parentibus.

Hæc ego grandævus posui tibi candide Lector.
Authore, EDW. COKE *Milite.*

The Eighth Edition carefully corrected: With an Alphabetical Table thereunto added.

LONDON,
Printed for the Society of Stationers, *Anno Domini*, 1670.

1x folio
C6822ki
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Rec. Dec. 7, 1904.

DEO,
PATRIÆ,
TIBI,

Proœmium.

OUR Author, a Gentleman of an ancient and fair deſcended Family *de Littleton*, took his name of a Town ſo called, as that Famous Chief Juſtice Sir *John de Markham*, and divers of our profeſſion and others have done. The name and degree of our Author.

Thomas de Littleton Lord of *Frankley*, had iſſue *Elizabeth* his only child, and did bear the Arms of his Anceſtors, *viz.* Argent, a Cheuron between three Eſcalop ſhells Sable. The bearing hereof is very ancient and honourable, for the Senators of *Rome* did wear bracelets of Eſcalop ſhells about their Arms, and the Knights of the honourable Order of Saint *Michael* in *France* do wear a coller of Gold in the form of Eſcalop ſhells at this day. Hereof much more might be ſaid, but it belongs unto others. His Arms. Inſtituted by *Lewis* the eleventh, King of *France*, 9. E. 4. 1469.

With this *Elizabeth* married *Thomas Weſtcote* Eſquire, the Kings ſervant in Court, a Gentleman anciently deſcended, who bare Argent, a Bend between two Cotiſſes Sable, a Bordure engrayled Gules, Bezantie. *Thomas Weſtcote*

But ſhe being fair and of a noble ſpirit, and having large poſſeſſions and inheritance from her Anceſtors *de Littleton*, & from her mother the daughter & heir of *Richard de Quatermains*, & other her anceſtors, (ready means in time to work her own deſire) reſolved to continue the honor of her name (as did the daughter and heir of *Charleton* with one of the ſons of *Knightley*, and divers others.) And therefore prudently, whilſt it was in her own power, provided by *Weſtcotes* aſſent before marriage, that her iſſue inheritable ſhould be called by the name of *de Littleton*. Theſe two had iſſue four ſons, *Thomas*, *Nicholas*, *Edmund* and *Guy*, and four daughters.

Thomas the eldeſt was our Author, who bare his fathers Chriſtian name *Thomas*, and his mothers ſurname, *de Littleton*, and the Arms *de Littleton* alſo; and ſo doth his Poſterity bear both name and arms to this day. Our Author bare his Mothers ſurname

Camden in his *Britania* ſaith thus, *Thomas Littleton*, alias *Weſtcote* the famous Lawyer, to whoſe treatiſe of Tenures the Students of the Common Law are no leſs beholding, than the Civilians to *Juſtinians* Inſtitutes. *Camden.*

Pſalm. 92. 11. The juſt ſhall flouriſh like the Palm tree, and ſpread abroad like the Cedars in *Libanus.*

The dignity of this fair deſcended Family *de Littleton*, hath grown up together, and ſpred it ſelf abroad by matches with many other ancient and honourable Families, to many worthy and fruitful branches, whoſe Poſterity flouriſh at this day, and quartereth many fair Coats, * and enjoyeth fruitful and opulent inheritances thereby.

* The beſt kind of quartering of Arms.

He was of the Inner Temple, and read learnedly upon the Statute of *W.* 2. *De donis conditionalibus*, which we have. He was afterward called *ad ſtatum & gradum ſervientis ad legem*, and was Steward of the Court of the Marſhalſey of the Kings houſhold, and for his worthineſs was made by King *H.6.* his Serjeant, and rode Juſtice of Aſſiſe the Northern Circuit, which places he held under King *E.* 4. until he in the ſixth year of his raign conſtituted him one of the Judges of the Court of Common Pleas, and then he rod Northamptonſhire Circuit. The ſame King in the 15. year of his raign, with the Prince, and other Nobles and Gentlemen of ancient blood, honored him with Knighthood of the Bath.

Kings Serjeat. *Rot. Pat. 33. H. 6. parte 1. M. 16 Mich. 34. H. 6. fol. 3. a.*

Judge of the Comon Pleas, *Rot. Pat. 6. E. 4 Parte 1. M. 15.*

Knight of the Bath. *15. E. 4.*

He compiled this Book when he was Judge, after the fourteenth year of the raign of King *E.* 4. but the certain time we cannot yet attain unto, but (as we conceive) it was not long before his death, becauſe it wanted his laſt hand, for that Tenant by Elegit, Statute Merchant, and Staple, were in the Table of the firſt printed Book, and yet he never wrote of them.

When he wrote this *14. E. 4. tit. Garranty 5. Litt. Sect. 692. 729. & 730.*

Our Author in compoſing this Work had great furtherance, in that he flouriſhed in the time of many famous & expert Sages of the Law. (a) Sir *Richard Newton*, (b) Sir *John Priſcot*, (c) Sir *Robert Dandy*, (d) Sir *Thomas Brian*, (e) Sir *Pierce Arderne*, (f) Sir *Richard Choke*, (g) *Walter Moyle*, (h) *William Paſton*, (i) *Robert Danvers*, (k) *William Aſcough*, and other Juſtices of the Court of Common Pleas. And of the Kings Bench, (l) Sir *John June* (m) Sir *John Hody*, (n) Sir *John Forteſcue*, (o) Sir *John Markam*, (p) Sir *Thomas Billing*: and other excellent men flouriſhed in his time.

The deceaſes of his Contemporaries.
(a) He died 27 *H.6.*
(b) He died 39 *H.6.*
(c) Died 11. *E. 4.*
(d) Died 16. *H.7.*
(e) Died 7. *E.4*
(f) Overlived our Author.
(g) Survived him alſo.
(h) Died 23. *H.6.*
(i) ſurvived our Author.
(k) Died 33. *H.6.*
(l) Died 18. *H. 6.*
(m) Died 20. *H.6.*
(n) Removed 1. *E.4.*
(o) Removed 8. *E.4.*
(p) Died 21. *E.4.*

And of worldly bleſſings I account it not the leaſt, that in the beginning of my ſtudy of the Laws of this Realm, the Courts of Juſtice, both of Equity and of Law, were furniſhed with men of excellent Judgment, Gravity and Wiſdom; As in the Chancery Sir *Nicholas Bacon*, and after him Sir *Thomas Bromley*. In the Exchequer Chamber the Lord *Burghley*, Lord high Treaſurer of *England*, and Sir *Walter Mildmay* Chancellour of the Exchequer. In the Kings Bench, Sir *Chriſtopher Wray*, and after him Sir *John Popham*. In the Common Pleas Sir *James Dyer*, and after him Sir *Edmund Anderſon*. In the Court of Exchequer, Sir *Edward Saunders*, after him Sir *John Jefferey*, and after him Sir *Roger Manwood*, men famous (amongſt many others) in their ſeveral places, and flouriſhed, and were all honoured and preferred by that thrice noble and vertuous Queen *Elizabeth* of ever bleſſed memory. Of theſe reverend Judges, and others their aſſociates, I muſt ingenuouſly confeſs, that in her raign I learned many things which in theſe Inſtitutes I have publiſhed; And of this Queen I may ſay, that as the Roſe is the Queen of flowers, and ſmelleth more ſweetly when it is pluckt from the branch: ſo I may ſay and juſtifie, that ſhe by juſt deſert was the Queen of Queens, and of Kings alſo, for Religion, Piety, Magnanimity, and Juſtice; who now by remembrance thereof, ſince Almighty God gathered her to himſelf, is of greater honour and renown, than when ſhe was living in this World. You cannot queſtion what Roſe I mean: For take the Red or the White, ſhe was, not only by royal deſcent, and inherent Birthright, but by Roſial Beauty alſo, heir to both.

Queen *Elix.*

And

And though we wish by our labors (which are but *Cunabula Legis*, the cradles of the Law) Delight and Profit to all the Students of the Law, in their beginning of their ſtudy (to whom the firſt part of the Inſtitutes is intended) yet principally to my loving friends, the Students of the honourable and worthy Societies of the Inner Temple, and Cliffords Inne, and of Lyons Inne alſo, where I was ſometime Reader. And yet of them more particularly to ſuch as have been of that famous Univerſity of *Cambridge, alma mea mater*. And to my much honored and beloved Allies and Friends of the Counties of *Norfolk*, my dear and native Country; and of *Suffolk*, where I paſſed my middle age; and of *Buckinghamſhire*, where in my old age I live. In which Counties, we out of former Collections compiled theſe Inſtitutes. But now return we again to our Author.

Inner Temple
Cliffords Inne
Lyons Inne.

He married with *Johan* one of the daughters and coheirs of *William Burley* of *Broomeſcroft* Caſtle in the County of *Salop*, a Gentleman of ancient deſcent, and bare the Arms of his Family, Argent a Feſſe Checkie Or and Azure, upon a Lyon Rampant Sable, armed Gules. And by her had three ſons, Sir *William*, *Richard* the Lawyer, and *Thomas*.

His marriage.

His iſſue.

In his life time, he, as a loving Father and wiſe man, provided matches for theſe three ſons, in vertuous and ancient Families (that is to ſay) for his ſon Sir *William*, *Ellen* daughter and coheir of *Thomas Welſh* Eſquire, who by her had iſſue *Johan* his onely child, married to Sir *John Aſhton* of *Tixtall* Knight: And for the ſecond wife of Sir *William*, *Mary* the daughter of *William Whittington* Eſquire, whoſe poſterity in *Worceſterſhire* flouriſh to this day. For *Richard Littleton* his ſecond ſon (to whom he gave good poſſeſſions of Inheritance) *Alice* daughter and heir of *William Winsbury* of *Pilleton*-hall in the County of *Stafford*, Eſquire, whoſe Poſterity proſper in *Staffordſhire* to this day. And for *Thomas* his third ſon (to whom he gave good poſſeſſions of Inheritance) *Anne* daughter and heir of *John Botreaux* Eſquire, whoſe poſterity in *Shropſhire* continue proſperous to this day. Thus advanced he his poſterity, and his poſterity by imitation of his Vertues have honoured him.

The eſtabliſhment of his poſterity, by the matches of his three ſons, with Vertue & good blood

He gave poſſeſſions of inheritance to his younger ſons for their better advancement.

He made his laſt Will and Teſtament the 22. day of *Auguſt* in the 21. year of the raign of King *Edward* the Fourth, whereof he made his three ſons, a Parſon, a Vicar and Servant of his Executors, and conſtituted ſupervisor thereof, his true & faithful Friend *John Alcock* Doctor of Law, of the Famous Univerſity of *Cambridge*, then Biſhop of *Worceſter*, (a man of ſingular Piety, Devotion, Chaſtity, Temperance, and holineſs of life) who amongſt other of his pious & charitable works founded Jeſus colledge in *Cambridge*, a firſt and faſt Friend to our honourable and vertuous Judge.

His laſt Will.

His Executors

His Supervisor.

He left this life in his great and good age, on the 23. day of the month of *Auguſt*, in the ſaid 21. year of the raign of *Edward* the Fourth; For it is obſerved for a ſpecial bleſſing of Almighty God, that few or none of that profeſſion die *Inteſtatus & improles*, without Will and without Child; which laſt Will was proved the 8. of *November* following in the Prerogative Court of *Canterbury*, for that he had *Bona notabilia* in divers Dioceſſes. But yet our Author liveth ſtill in *ore omnium juris prudentium*.

His Age.
His departure.

Littleton is named in 1. *H.*7. and in 21. *H.*7. Some do hold, that it is no error

1. *H.*7. *fol.*27.
21. *H.*7. *f.*32. *b.*

error either in the Reporter or Printer; but that it was *Richard* the ſon of our Author, who in thoſe days profeſſed the Law, and had read upon the ſtatute of *W.2. quia multi per malitiam*, and * unto whom his Father dedicated his Book; And this *Richard* died at *Pilleton* hall in *Staffordſh.* in 9. *H.8.*

W.22. cap.12.
* See *Littleton Sect.* 749.

His Sepulchre

The body of our Author is honorably interred in the Cathedral Church of *Worceſter*, under a fair Tomb of Marble, with his ſtatue or portrature upon it, together with his own match, and the matches of ſome of his Anceſtors, and with a memorial of his principal Titles, and out of the mouth of his ſtatue proceedeth this prayer, *Fili Dei miſerere mei*, which he himſelf cauſed to be made and finiſhed in his life time, and remaineth to this day. His wife *Johan* Lady *Littleton* ſurvived him, and left a great inheritance of her Father, and *Ellen* her Mother (Daughter and heir of *John Grendon* Eſquire) and other her Anceſtors, to Sir *William Littleton* her ſon.

When this Work was publiſhed.

This Work was not publiſhed in Print, either by our Author himſelf, or *Richard* his ſon, or any other, until after the deceaſes both of our Author, and of *Richard* his ſon. For I find it not cited in any Book or Report, before Sir *Anthony Fitzherbert* cited him in his *Natura Brevium*; who publiſhed that Book of his *Natura Brevium* in 26. *H.* 8. Which Work of our Author in reſpect of the excellency thereof (by all probability) ſhould have been cited in the Reports of the reigns of *E.*5. *R.*3. *H.*7. or *H* 8. or by S. *Jermyn* in his Book of the Doctor and Student (which he publiſhed in the three and twentieth year of *H.*8.) if in thoſe days our Authors Book had been printed. And yet you ſhall obſerve, that time doth ever give greater authority to works and Writings, that are of great and profound Learning, than at the firſt they had. The firſt Impreſſion that I find of our Anthors Book was at *Roan* in *France*, by *William le Tailier* (for that it was written in *French*) *Ad inſtantiam Richardi Pinſon*, at the inſtance of *Richard Pinſon* the Printer of King. *H.*8. before the ſaid Book of *Natura Brevium* was publiſhed; and therefore upon theſe and other things that we have ſeen, we are of opinion, that it was firſt printed about the four and twentieth year of the reign of King *H.* 8. ſince which time he hath been commonly cited, and (as he deſerves) more and more highly eſteemed.

F.N.B. 212. *c.*

Nota.

When this Worke was firſt imprinted

His Picture.

The figure of his Minde.

He that is deſirous to ſee his Picture, may in the Churches of *Frankley* and *Hales Owen* ſee the grave and reverend countenance of our Author, the outward man, but he hath left this Book, as a figure of that higher and nobler part (that is) of the excellent and rare endowments of his mind, eſpecially in the profound knowledge of the Fundamental Laws of this Realm. He that diligently reads this his excellent Work, ſhall behold the child and figure of his mind, which the more often he beholds in the viſial line, and well obſerves him, the more ſhall he juſtly admire the Judgment of our Author, and increaſe his own. This ownly is deſired, that he had written of other Parts of the Law, and ſpecially of the Rules of good pleading (the heart-ſtring of the Common Law) wherein he excelled, for of him might the ſaying of our Engliſh Poet be verified:

Chaucer.

There to he could indite and maken a thing,
There was no Wight could pinch at his writing.

So

So far from exception, as none could pinch at it. This skill of good pleading he highly in this Work commended to his ſon, and under his name to all other Students ſons of his Law. He was learned alſo in that Art, which is ſo neceſſary to a complete Lawyer (I mean) Logick, as you ſhall perceive by reading of theſe Inſtitutes, wherein are obſerved his Syllogiſms, Inductions, and other Arguments; and his Definitions, Deſcriptions, Diviſions, Etymologies, Derivations, Significations, and the like. Certain it is that when a great learned man (who is long in making) dyeth, much learning dyeth with him. *Seneca.*

Good pleading.

Logick.

That which we have formerly written, that this Book is the ornament of the Common Law, and the moſt perfect and abſolute Work that ever was written in any humane Science: and in another place, that which I affirmed and took upon me to maintain againſt all oppoſites whatſoever, that it is a Work of as abſolute perfection in his kind, and as free from errour, as any Book that I have known to be written of any humane Learning, ſhall to the diligent and obſerving Reader of theſe Inſtitutes, be made manifeſt, and we by them (which is but a Commentary upon him) be deemed to have fully ſatisfied that, which we in former times have ſo confidently affirmed and aſſumed. His greateſt commendation, becauſe it is of greateſt profit to us, is, that by this excellent Work, which he had ſtudiouſly learned of others, he faithfully taught all the profeſſors of the Law in ſucceeding Ages. The Victory is not great to overthrow his oppoſites, for there was never any learned man in the Law, that underſtood our Author, but concurred with me in his commendation. *Habet enim juſtam venerationem quicquid excellit*, For whatſoever excelleth hath juſt honour due to it. Such, as in words have endeavoured to offer him diſgrace, never underſtood him, and therefore we leave them in their ignorance, and wiſh that by theſe our Labours, they may know the truth, and be converted. But herein we will proceed no further. For, *Stultum eſt abſurdas opiniones accuratius refellere*. It is meer Folly to confute abſurd Opinions with too much curioſity. *Cicero.* *Ariſtotle.*

The commendation of his Work. *Lib. 2. fol. 67. Epiſt. 10. li. 10.*

And albeit, our Author in his three Books cites not many Authorities, yet he holdeth no opinion in any of them, but is proved and approved by theſe two faithful witneſſes in matter of Law, Authority, and Reaſon. Certain it is, when he raiſeth any queſtion, and ſheweth the reaſon on both ſides, the latter opinion is his own, and is conſonant to Law. We have known many of his caſes drawn in queſtion, but never could find any Judgment given againſt any of them, which we cannot affirm of any other Book or Edition of our Law. In the raign of our late Soveraign Lord King *James* of Famous and ever bleſſed memory; It came in queſtion upon a Demurrer in Law, whether the releaſe to one treſpaſſer ſhould be available or no, to his companion. Sir *Henry Hobart* that honourable Judge, and great Sage of the Law, and thoſe reverend and learned Judges *Warburton*, *Winch*, and *Nichols* his companions, gave Judgment according to the Opinion of our Author, and openly ſaid, That they owed ſo great reverence to *Littleton*, as they would not have his Caſe diſputed or queſtioned, and the like you ſhall find in this part of the Inſtitutes.

Nota.

Mich 13. Jac. in Communi Banc. inter Cock & Ilnours.

Thus

Thus much (though not ſo much as his due) have we ſpoken of him, both to ſet out his life, becauſe he is our Author, and for the imitation of him by others of our profeſſion.

What is indeavoured by theſe Inſtitutes.

We have in theſe Inſtittues endeavoured to open the true ſenſe of every of his particular caſes, and the extent of every of the ſame either in expreſs words, or by implication, and where any of them are altered by any latter Act of Parliament, to obſerve the ſame, and wherein the alteration conſiſteth: Certain it is that there is never a period nor (for the moſt part) a word, nor an &c. but affordeth excellent matter of learning. But the module of a Preface cannot expreſs the obſervations, that are made in this Work, of the deep Judgment and notable Invention of our Author. We have by compariſon of the late and modern Impreſſions with the original Print, vindicated our Author from two Injuries: Firſt, from divers corruptions in the late and modern Prints, and reſtored our Author to his own. Secondly, From all additions, and incroachments upon him, that nothing might appear in his Work but his own.

The benefit of theſe Inſtitutes

Our hope is, that the young Student, who heretofore meeting at the firſt, and wraſtling with as difficult terms and matter, as in many years after, was at the firſt diſcouraged (as many have been) may by reading theſe Inſtitutes, have the difficulty and darkneſs both of the Matter, and of the Terms and words of Art in the beginnings of his Study facilitated, and explained unto him, to the end he may proceed in his Study cheerfully, and with delight, and therefore I have tearmed them Inſtitutes, becauſe my deſire is, they ſhould inſtitute, and inſtruct the ſtudious, and guide him in a ready way to the Knowledge of the National Laws of *England*.

Wherefore called Inſtitutes.

Wherefore publiſhed in Engliſh.

This part we have (and not without preſident) publiſhed in Engliſh, for that they are an introduction to the knowledge of the National Laws of the Realm; a Work neceſſary, and yet heretofore not undertaken by any, albeit in all other profeſſions there are the like. We have left our Author to ſpeak his own Language, and have tranſlated him into Engliſh, to the end that any of the Nobility, or Gentry of this Realm, or of any other eſtate, or profeſſion whatſoever, that will be pleaſed to read him and theſe Inſtitutes, may underſtand the Language wherein they are written.

I cannot conjecture that the general communicating of theſe Laws in the Engliſh Tongue can work any inconvenience, but introduce great profit, ſeeing that *Ignorantia juris non excuſat*, Ignorance of the Law excuſeth not. And herein I am juſtified by the Wiſdom of a Parliament; the

Regula.

36.E.3.cap.15. words whereof be, *That the Laws and Cuſtoms of this Realm the rather ſhould be reaſonably perceived and known, and better underſtood by the tongue uſed in this Realm, and by ſo much every man might the better govern himſelf without offending of the Law, and the better keep, ſave, and defend his heritage and poſſeſſions. And in divers Regions and Countries where the King, the Nobles, and other of the ſaid Realm have been, good governance and full right is done to every man, becauſe that the Laws and Cuſtoms be learned and uſed in the Tongue of the Country*: as more at large by the ſaid Act, and the purview thereof may appear, *Et neminem oportet eſſe ſapientiorem Legibus*, No man ought to be wiſer than the Law.

Regula.

And

And true it is that our Books of Reports and ſtatutes in ancient times were written in ſuch French as in thoſe times was commonly ſpoken and written by the French themſelves. But this kind of French that our Author hath uſed is moſt commonly written and read, and very rarely ſpoken, and therefore cannot be either pure, or well pronounced. Yet the change thereof (having been ſo long accuſtomed) ſhould be without any profit, but not without great danger and difficulty: For ſo many ancient Terms and words drawn from that legal French, are grown to be *Vocabula artis*, Vocables of Art, ſo apt & ſignificant to expreſs the true ſenſe of the Laws, & are ſo woven into the laws themſelves, as it is in a manner impoſſible to change them, neither ought legal terms to be changed.

Our Authors kind of French.

36. E. 3. ubi ſupr.

In School Divinity, and amongſt the Gloſſographers and Interpreters of the Civil and Canon Laws, in Logick and in other liberal Sciences, you ſhall meet with a whole Army of words, which cannot defend themſelves *in Bello Grammaticali*, in the Grammatical War, and yet are more ſignificant, compendious, and effectual to expreſs the true ſenſe of the matter, than if they were expreſſed in pure Latin.

This work we have called The firſt part of the Inſtitutes, for two cauſes: Firſt, for that our Author is the firſt book that our Student taketh in hand. Secondly, for that there are ſome other parts of Inſtitutes not yet publiſhed, (*viz.*) the ſecond part being a Commentary upon the Statute of *Magna Charta*, *Weſtm.* 1. and other old Statutes. The third part treateth of Criminal cauſes and Pleas of the Crown: which three parts we have by the goodneſs of Almighty God already finiſhed. The fourth part we have purpoſed to be of the Juriſdiction of Courts; but hereof we have only collected ſome materials towards the raiſing of ſo great and honourable a Building. We have by the goodneſs and aſſiſtance of Almighty God brought this twelfth Work to an end: In the eleven Books of our *Reports* wee have related the opinions and judgments of others; but herein we have ſet down our own.

Wherefore called the firſt part.

Before I entred into any of theſe parts of our Inſtitutes, I acknowledging mine own weakneſs and want of judgment to undertake ſo great Works, directed my humble Suit and Prayer to the Author of all Goodneſs and Wiſdom, out of the Book of *Wiſdom*; *Pater & Deus miſericordiæ, da mihi ſedium tuarum aſſiſtricem ſapientiam, mitte eam de Cœliſanctis tuis, & à ſede magnitudinis tuæ, ut mecum ſit, & mecum laboret, ut ſciam quid acceptum ſit apud te*; Oh Father and God of mercy, give me wiſdom, the Aſſiſtant of thy ſeats; Oh ſend her out of thy holy Heavens, and from the ſeat of thy Greatneſs, that ſhe may be preſent with me, and labour with me, that I may know what is pleaſing unto thee, *Amen*.

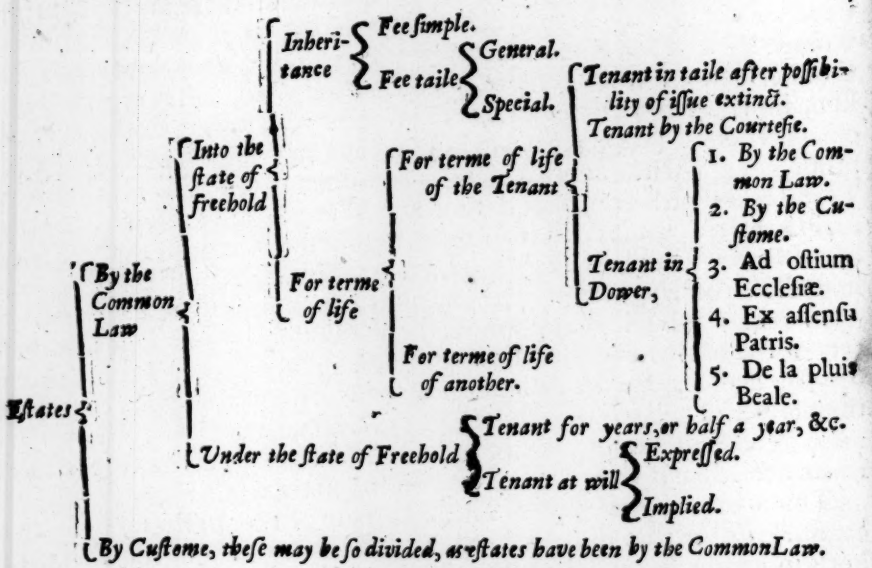
Lib. Sap. ca. 9. verſ. 4. 10.

Our Author hath divided his whole Work into three Books: In his firſt he hath divided Eſtates in Lands and Tenements, in this manner; for, *Res per diviſionem melius aperiuntur*.

Bracton.

Eſtates

A Figure of the diviſion of Poſſeſſions.



Our Authour dealt onely with the Eſtates and terms aboveſaid; Somewhat we ſhall ſpeak of Eſtates by force of certain Statutes, as of Statute Merchant, Statute Staple, and *Elegit*, (whereof our Authour intended to have written) and likewiſe to Executors to whom Lands are deviſed for payment of Debts, and the like.

Regula. Incivile eſt, parte una perſpecta, tota re non cognita, de ea judicare.

I ſhall deſire, That the learned Reader will not conceive any opinion againſt any part of this painful and large Volume, until he ſhall have adviſedly read over the whole, and diligently ſearched out and well conſidered of the ſeveral Authorities, Proofs, and Reaſons which we have cited and ſet down for warrant and confirmation of our opinions throughout this whole Work.

Mine advice to the Student is, That before he read any part of our Commentaries upon any Section, that firſt he read again and again our Author himſelf in that Section, and do his endeavours, firſt of himſelf, and then by conference with others, (which is the like of Study) to underſtand it, and then to read our Commentary thereupon, and no more at any one time, than he is able with delight to bear away, and after to meditate thereon, which is the life of reading. But of this Argument we have for the better direction of our Student in his Study, ſpoken in our Epiſtle to our firſt Book of *Reports*.

And albeit the Reader ſhall not at any one day (do what he can) reach to the meaning of our Authour, or of our Commentaries, yet let him no way diſcourage himſelf, but proceed; for on ſome other day, in ſome other place, that doubt will be cleared. Our Labours herein are drawn out to this great Volume, for that our Authour is twice repeated, once in French, and again in Engliſh.

THE FIRST PART of the Institutes of the LAWES of *England*.

CHAP. I. *Fee simple.* Sect. 1.

TEnant en fee simple est celuy que ad tres ou tenements a tener a luy et a ses heires a touts iours. Et est appel en Latin, Feodū simplex, quia feodum idem est quod hæreditas, & simplex idem est quod legitimum vel purum, & sic feodum simplex idē est quod hæreditas legitima, vel hæreditas pura. Car si hōe voile purchaser terres ou Tenements en Fee simple, il covient de aver ceux paroles en son purchase, A aver et tener a luy et a ses hēs: Car ceux paroles (ses heires) font lestate deinheritance. Car si home

TEnant in Fee simple is he which hath Lands or Tenements to hold to him and his heirs for ever. And it is called in Latin, *Feodum simplex*, for *Feodum* is the same that Inheritance is, and *Simplex* is as much to say, as lawful or pure. And so *Feodum simplex* signifies a lawful or pure Inheritance. For if a man would purchase lāds or tenements in fee simple, it behooveth him to have these words in his purchase, To have and to hold to him and to his Heirs; for these words (his Heirs) make the estate of the Inheritance. For if a man pur-

TEnant. In Latine Tenens, is derived of the verb Teneo, and hath in the law five significations. 1. It signifies the estate of the Land, as when the Tenant in a præcipe of land, pleads, Quod non tenet, &c. this is as much as to say, That he hath not seisin of the Free hold of the Land in question. And in this sense doth our author take it in this place: & therefore he saith tenant in fee simple is he which hath lands to hold to him & his heirs. 2. It signifieth the Tenure or the service whereby the lands & tenements been holden, and in this sense it is said in the Writ of right, quæ clāmat tenere de te per liberum servitium &c. And in this signification he is called a tenāt or holder, because all the lands & tenements in England in the hands of subjects, are holden mediately or immediately

Vide Sect. 85.

8.H.7.12. 18.Ed.3.35. 24.E.3. 65.66.44.E.3.f. 48.E.3.9.

of the King. For in the law of England we have not properly, Allodium, That is, any Subjects land that is not holden, unleſs you will take Allodium, for Ex ſolido, as it is often taken in the book of Domeſday: and tenants in Fee ſimple are there called Alodarii or Aloarii. And he is called a Tenant, becauſe he holdeth of ſome ſuperior Lord by ſome ſervice. And therefore the King in this ſenſe cannot be ſaid to be a tenant, becauſe he hath no ſuperior, but God Almighty, Prædium domini regis eſt directum dominium, cujus nullus Author eſt niſi Deus. King as Bracton ſaith, Omnis quidem ſub eo, & ipſe ſub nullo, niſi tantum ſub Deo. The Poſſeſſions of the King are called Sacra Patrimonia, and Dominica Coronæ regis. But though a ſubject hath not properly Directum, yet hath he Utile Dominium. Of theſe Tenants our Author ſpeaketh in his ſecond book. Also Tenere ſignifieth performance, as in the writ of covenant, Quod teneat conventionem, that is, That he hold or perform his covenant. And likewiſe it ſignifieth to be bound, as it is ſaid in every common Obligation, teneri & firmiter obligari. Laſtly, It ſignifieth to deem or judge, as in 38. E. 3. c. 4. It ſhall be holden for none (that is) judged or deemed for none, and ſo we commonly ſay, it is holden in our books. And theſe ſeveral ſignifications do properly belong to our Tenant in Fee ſimple. For he hath the eſtate of the land, he holdeth the land of ſome ſuperior Lord, and is to perform the ſervices due, and thereunto he is bounden by doom and judgment of Law. Of the ſeveral eſtates of Land our Author treateth in his firſt book, and beginneth with Fee ſimple, becauſe all other eſtates and intereſts are derived out of the ſame.

Mir. des Juſtic. c. 1. ſect. 3. Cuſtoms de Normandy. cap. 28.

Left. de 16. R. 2. cap. 5. 14. El. Dy. 313. 2. Lib. 1. 47. in Alton Woods caſe.

Bract. lib. 1. cap. 8.

purchaſe terres per ceux paroix, A aver et tener a luy a touts jours: ou p tiels parols, A aver et tener a luy & a ſes aſsignes a touts jours: en ceux deux cales il ny ad eſtate forſique pur terme de vie, pur ceo que il fault ceux pols (ſes heirs) les queux paroix tantſolement font leſtate denheritance en touts feoffments et Grants.

chaſe Lands by theſe words, To have & to hold to him for ever; or by theſe words, To have and to hold to him and his Aſſignes for ever: in theſe two caſes he hath but an eſtate for term of life, for that there lack theſe words (his Heirs) which words onely make an Eſtate of Inheritance in all Feoffments and Grants.

¶ *Fee ſimple.* Fee commeth of the French Fief, (a) prædium beneficiarium, and legally ſignifieth Inheritance, as our Author himſelf hereafter expounded it. And ſimple is added, for that it is deſcendible to his heirs generally, that is, ſimply, without reſtraint to the heirs of his body, or the like. Feodum eſt quod quis tenet ex quacunque cauſa, ſive ſit tenementum, ſive reditus, &c. In Domeſday it is called Feudum. (a) Of Fee ſimple, it is commonly holden, that there be three kinds, viz. Fee ſimple abſolute, Fee ſimple conditional, and Fee ſimple qualified, or a baſe fee. But the more genuine and apt diviſion, were to divide Fee, that is, Inheritance, into three parts, viz. ſimple or abſolute, conditional, and qualified or baſe. For this word (ſimple) properly excludeth both conditions and limitations, that defeat or abridge the fee. * Hereby it appeareth, that Fee in our legal underſtanding ſignifieth, that the land belongs to us and our heirs, in reſpect whereof the owner is ſaid to be ſeized in fee, and in this ſenſe the King is ſaid to be ſeized in fee. (b) It is alſo taken, as it is holden of another by ſervice, and that belongeth only to the Subject; Item dicitur feodum alio modo ejus qui alium feoffat, & qd' quis tenet ab alio, ut ſi ſit qui dicat, talis tenet de me tot feoda per ſervitium militare. And Fleta ſaith, Poterit unus tenere in feodo quoad ſervitia, ſicut dominus capitalis, & non in Dominico, alius in feodo & dominico, & non in ſervitio, ſicut libere tenens alicujus. (c) And therefore if a ſtranger claim a Seigniory, and diſtrein and avow for the ſervice, the Tenant may plead, That the Tenancy is extra feodum, &c. of him (that is) out of the Seigniory, or not holden of him that claimeth it, but he cannot plead extra feodum, &c. unleſs he take the Tenancy, that is, the ſtate of the Land upon him. Of Fee in the firſt ſenſe our Author treateth in this firſt book; and as it is taken in the ſecond ſenſe, in his ſecond book: and of the third you ſhall read in our Author, Sect. 13. 643. 644. 645. and plentifully in our books quoted in the margent.

Brit. fo. 83. 207. 208. Fleta lib. 5. ca. 5. & lib. 3. cap. 8. Bract. li. 4. 263. Domeſday. Mir. des Juſt. ca. 2. ſect. 15. 17. Bract. l. 2 c. 5. 6. 7. Brit. ca. 34. fo. 89 Flet. lib. 3. ca. 2. 8. & 9. & lib. 5. cap. 5. (a) Bract. f. 263. & 207. Pl. Com. in Walſ. caſ. 7. H. 4. 46. 8. H. 4. 15. 18. H. 8. 3. b. 27. aſ. 33. 18. Aſs. 5. 18. Ed. 3. 46. 24. E. 3. 28. 9. Ed. 4. 18. 16. H. 7. 4. 10. E. 2. Account 56. 22. R. 2. Diſc. 50 12. Ed. 4. 3. 15. E. 4. 8. Dy. 8. El. 252. 253. 12. H. 8 8. 4. H. 7. 2. The Caſe of a perſon which hath a qualified fee. See in the title of Deſc. * Vide Sect. 4. (b) Bract. l. 4. f. 263. Flet. l. 5. c. 5. Brit. fo. 205. 207. (c) 2. aſ. p. 4. 12. Aſs. 38. 12 E. 3. tit. Hors de ſon fee 28. 28. Aſs. 41. 7. H. 4. 30. 2. H. 6. 1.

¶ *Terres ou Tenements.* Here is to be obſerved, That a man may have a Fee ſimple in three kinds of hereditaments, viz. Real, Perſonal, and Mixt: Real, as lands and Tenements, whereof our Author here ſpeaketh. Perſonal, as King Edward the firſt in the thirteenth year of his Reign, Conceſſit Edmundo fratri ſuo chariſſimo, quod ipſe & hæredes ſui habeant ad requiſitionem ſuam in Cancellaria noſtra & hæredum noſtrorum Juſti-

Rot. pat. 13. E. 1.

ciarios

ciarios ad placita foreſtarum quas idem Frater noſter habet ex dono domini Regis Henrici patris noſtri ſecundum aſſiſ', foreſtæ, tenend', &c. In this caſe the Grantee and his heirs had a perſonal Inheritance in making of a requeſt to have letters patents of commiſsion to have Juſtices aſsigned to him to hear and determine of the pleas of the Foreſt, and concerneth neither lands or tenements. And ſo it is if an Annuity be granted to a man and his heirs: It is a fee ſimple perſonal, & ſic de ſimilibus. And laſtly, hereditaments mixt both of the realty and perſonalty. As the Abbot of Whitby in the county of Yorke, having a Foreſt of the gift of William of Percy, founder of that Abby, and by the charters of King John, and of other his progenitors. King Henry the third did grant Abbati & conventui de Whitbye quod ipſi & eorum ſucceſſores in perpetuum habeant viridarios ſuos proprios de libertate ſua de Whitbye eligend' de cetero in pleno comitatu Eborum prout moris eſt ad reſponſiones & preſentationes, faciend' de tranſgreſſionibus quæ amodo fieri contiget de venatione infra metas foreſtæ ſuæ de Whitbye quam habent ex donatione Willi. de Percey & Alani de Percey, filii ejus, & redditione & conceſsione domini Johannis quondam regis Angliæ patris noſtri, & confirmatione noſtra coram Juſtitiariis noſtris itenerantibus ad placita foreſtæ in partibus illis & non alibi ſicut viridarii foreſtæ noſtræ hujuſmodi reſponſiones & preſentationes facere debent, & conſueverunt. Et ſi contingat aliquos forinſiquos qui non ſunt de libertate predictorum Abbatis & conventus tranſgreſſionem facere de venatione infra metas foreſtæ predictæ quos predicti viridarii attachiare non poſſunt. Volumus & concedimus pro nobis & heredibus noſtris quod hujuſmodi tranſgreſſores per juſticiarios foreſtæ noſtræ ultra Trentam attachientur ad preſentationem viridariorum predict. ad reſpondendum inde quoram Juſticiariis noſtris itenerantibus ad placita foreſtæ noſtræ in partibus illis cum ibid. ad placitandum venerint prout ſecundum aſſiſſam & conſuetudinem foreſtæ noſtræ fuerint faciend. Which chapter was pleaded upon the claim made by the Abbot of Whitby, before Willoughby, Hungerford, and Hanbury, Juſtices in Eire in the Foreſt of Pickering, which Eire began Anno 8. E. 3. And theſe before them were allowed. And when the King createth an Earl of ſuch a county, or other place, To hold that dignity to him and his heirs: This dignity is perſonal, and alſo concerneth lands and tenements. But of this matter more ſhall be ſaid in the next chapter, Sect. 14. & 15.

Ro.Pat.an.47.H.3. Itin.Pickering.8.E.3. Ro.42.

¶ *Et eſt appel en Latine feodum ſimplex, quia feodum idem eſt, quod hereditas.* Here Littleton himſelf teacheth the ſignification of feodum, according to that which hath been ſaid, which only is to be applyed to fee ſimple pure and abſolute. And this and all his other Interpretations of words and Etymologies throughout all his three books (wherein the ſtudious Reader will obſerve many) are perſpicuous, and ever per notiora & minus quam ignotum per ignotius, and are moſt neceſſary, for ignoratis terminis ignoratur & ars.

Bract.lib.4.cap.9.fo.263. Britt.ca.32.& 79. For interpretation of words and Etymologies. Vid.Sect.9.18.95.116. 119.135.154.164.174. 184.186.194.204.234. 267.268.330.337.424. 520.592.645.689.733.

¶ *Simplex idem eſt quod legitimum vel purum*, hereof he treateth only in this place. And Littleton ſaith well, that Simplex idem eſt quod purum. Simplex enim dicitur quia ſine plicis, & purum dicitur, quod eſt merum & ſolum ſine additione. Simplex donatio & pura eſt ubi nulla addita eſt conditio ſive modus, ſimplex enim datur quod nullo additamento datur.

Bract.lib.2.ca.39.fo.92. 62.b.lib.4.ca.28. Fleta.lib.3.ca.8. Bract.lib.2.ca.5.&c. Britt.ca.34.

¶ *Hereditas legitima vel hereditas pura.* And therefore it is well ſaid, quod donationum alia ſimplex & pura, quæ nullo jure civili vel naturali cogente, nullo precedente metu vel interveniente ex mera gratuitaque libertate donantis procedit, & ubi nullo caſu velit donator ad ſe reverti quod dedit, alia ſub modo conditione vel ob cauſam, in quibus caſibus non prope ſit donatio, cum donator id ad ſe reverti velit, ſed quedam potius feodalis dimiſsio alia abſoluta & larga, alia ſtricta & coarctata, ſicut certis heredibus quibuſdam à ſucceſſoribus excluſis, &c. And therefore ſeeing Fee ſimple is hereditas legitima vel pura, it plainly confirmeth that the diviſion of fee is by his authority rather to be divided as is aforeſaid then fee ſimple. And he ſaith well in the diſjunctive, legitima vel pura, for every fee ſimple is not Legitimum. For a diſſeiſor, abator, intruder, uſurper, &c. have a fee ſimple, but it is not a lawful fee. So as every man that hath a fee ſimple, hath it either by right or by wrong. If by right, then he hath it either by purchaſe or diſcent. If by wrong, then either by diſſeiſin, intrusion, abatement, uſurpation, &c. In this chapter he treateth only of a lawful fee ſimple, and divideth the ſame as is aforeſaid.

Fleta.lib.3.ca.2.

¶ *Car ſi home purchaſe.* Perſons capable of purchaſe are of two ſorts, perſons natural created of God, as I. S. I. N. &c. and perſons incorporate or politique created by the policy of man; (and therefore they are called bodies politique and whole of two ſorts, viz. either ſole, or aggregate of many: again aggregate of many, either of all perſons capable, or of one perſon capable, and the reſt incapable or dead in law, as in the chapter of Diſcontinuance, Sect. 57. ſhall be ſhewed. Some men have capacity to purchaſe, but not ability to hold. Some capacity to purchaſe and ability to hold or not to hold, at the election of them or others. Some capacity to take and to hold. Some neither capacity to take nor to hold. And ſome ſpecially diſabled to take ſome particular thing.

Vid.Sect.57. Who have ability to grant. Perſons capable of purchaſe. 11.Eliz.Dier.283. 11.H.4.20.& 26. 7.E.4.29.

If an Alien Chriſtian or Infidel purchaſe houſes, lands, tenements, or hereditaments to him

and his heires, albeit he can have no heires, yet he is of capacity to take a fee ſimple but not to hold. For upon an office found, the King ſhall have it by his prerogative, of whom ſoever the land is holden. And ſo it is if the Alien doth purchaſe land and die, the law doth call the freehold and inheritance upon the King. If an alien purchaſe any eſtate of freehold in houſes, lands, tenements, or hereditaments, the King upon office found ſhall have them. If an alien be made Denizen and purchaſe land, and die without iſſue, the lord of the fee ſhall have the eſcheat, and not the King. But as to a leaſe for years, there is a diverſitie between a leaſe for years of a houſe for the habitation of a merchant ſtranger being an alien, whoſe King is in league with ours, and a leaſe for year of lands, meadows, paſtures, woods, and the like. For if he take a leaſe for years of land, meadows, &c. upon office found, the King ſhall have it. But of a houſe for habitation he may take a leaſe for years as incident to Commercity, for without habitation he cannot merchandize or trade. But if he depart, or relinquiſh the realm, the King ſhall have the leaſe. So it is if he die poſſeſſed thereof, neither his Executors or Adminiſtrators ſhall have it, but the King: for he had it only for habitation as neceſſary to his trade or traffique, and not for the benefit of his Executor or Adminiſtrator. But if the alien be no merchant, then the King ſhall have the leaſe for years, albeit it were for his habitation, and ſo it is if he be an alien enemy. And all this was ſo reſolved by the Judges aſſembled together for the purpoſe in the caſe of Sir James Croft, Paſch. 29. of the reign of Queen Elizabeth. Alſo if a man commit felony, and after purchaſe lands, and after is attainted, he had capacity to purchaſe, but not to hold it; for in that caſe the Lord of the fee ſhall have the Eſcheat. And if a man be attainted of felony, yet he hath capacity to purchaſe to him and to his heirs, albeit he can have no heir, but he cannot hold it, for in that caſe the King ſhall have by his prerogative, and not the Lord of the fee, for a man attainted hath no capacity to purchaſe (being a man civiliter mortuus) but only for the benefit of the King, no more than the alienee hath. If any ſole Corporation or aggregate of many, either Eccleſiaſtical or temporal (for the words of the ſtatute be, Si quis religioſus vel alius) purchaſe Lands or Tenements in fee, they have capacity to take but not to retain (unleſs they have a ſufficient licence in that behalf) for within the year after the alienation, the next Lord of the fee may enter, and if he do not, then the next immediate lord from time to time to have halfa year, and for default of all the meſn Lords, then the King to have the land ſo alienated for ever, which is to be underſtood of ſuch inheritance as may be holden. But of ſuch inheritances as are not holden, as Villeins, rents-charges, commons, and the like, the King ſhall have them preſently by a favourable interpretation of the ſtatute. An Annuity granted to them is not mortmain, becauſe it chargeth the perſon only. Some have ſaid that it is called mortmain, Manus mortua, quia poſſeſſio eorum eſt immortalis, manus pro poſſeſſione, & mortua pro immortali, and the rather for that by the laws and ſtatutes of the realm, all Eccleſiaſtical perſons are reſtrained to alien. * Others ſay it is called, manus mortua per Antiphraſin, becauſe bodies politique and corporate never die. Others ſay that it is called mortmain by reſemblance to the holding of a mans hand that is ready to die, for that he then holdeth, he letteth not go till he be dead. Theſe and ſuch others are framed out of wit and invention; but the true cauſe of the name, and the meaning thereof, was taken from the effects, as it is expreſſed in the ſtatute it ſelf, per quod quæ ſervitia ex hujuſmodi feodis debentur, & quæ ad defenſionem regni ab initio proviſa fuerunt indebite ſubtrahuntur & capitales domini eſchaetas ſuas amittunt, ſo as the lands were ſaid to come to dead hands as to the lords, for that by alienation in mortmain, they loſt wholly their eſcheats, and in effect their Knights ſervices for the defence of the Realm, Wards, Marriages, Reliefs, and the like, and therefore was called a dead hand, for that a dead hand yieldeth no ſervice.

30.H.6.23.Pl.Com.483.

5.Mar.Br.tit.Denizē 22

Paſch.29.Eliz.in Sir James Crofts caſe.

49.Aſſ.pl.2.49.E.3.11.

Magna Carta. ca.36.
7.E.1.de religioſis.
W.2.13.E.1.ca.33.
15.R.2.ca.5.
23.H.8.ca.10.
39.Eliz.ca.5.
23.H.3.Aſſ.436.
29.Aſſ.p.17.Brit.f.32.
Fleta.lib.3.cap.4.& 5.
19.E.2.tit.Vſh.32.
29.E.3.Ibid.13.21.E.3.5
4.H.6.9.19.H.6.63.65.
3.E.4.14.19.E.3.
Mortm.8.
34.H.6.37.19.H.6.63.
7.E.4.14.
*Pl.Com.193.in Wrotesleyes caſe.

Le ſtatut de Religioſis. 7.E.1.

I paſs over Villeins or Bondmen, who have power to purchaſe lands, but not to retain them againſt their Lords, becauſe you ſhall read at large of them in their proper place in the Chapter of Villenage.

An Infant or minor (whom we call any that is under the age of 21 years) hath without conſent of any other, capacity to purchaſe, for it is intended for his benefit, and at his full age, he may either agree thereunto, and perfect it, or without cauſe to be alledged, waive or diſagree to the purchaſe, and ſo may his heirs after him, if he agreed not thereunto after his full age.

A man of non ſane memory may, without the conſent of any other, purchaſe lands, but he himſelf cannot waive it, but if he die in his madneſs, or after his memory recovered without agreement thereunto, his heir may waive and diſagree to the ſtate without any cauſe ſhewed, and ſo of an Ideot. But if the man of non ſane memory recover his memory, and agree unto it, it is unavoydable.

If an Abbot purchaſe lands to him and his Succeſſors without the conſent of his Coven, he himſelf cannot waive it; but his Succeſſor may upon juſt cauſe ſhewed, as if a greater rent were reſerved thereupon than the value of the land, or the like; but he cannot waive it unleſs it be upon juſt cauſe, & ſic de ſimilibus prælatus Eccleſiæ ſuæ conditionem meliorare poteſt, deteriorare nequit. And in another place he ſaith, Eſt enim Eccleſia ejuſdem conditionis, quæ ſingitur vice minoris.

43.Aſſ.p.25.

Bract.lib.2. fo. 12.& 32

But

But no simile holds in every thing, according to the ancient saying, Nullum simile quatuor pedibus currit. (a) An Hermophradite may purchase according to that Sex which prevaileth. A feme covert cannot take any thing of her husband, but is of capacity to purchase of others without the consent of her husband. And of this opinion was Littleton in our books, and in this book Sect. 677. but her husband may disagree thereunto, and devest the whole estate; but if he neither agree nor disagree, the Purchase is good; but after his death, albeit her husband agreed thereunto, yet she may without any cause waive the same, and so may her heirs also, if after the decease of her husband she her self agreed not thereunto.

(a) 1.H.7.16.7.H.4.17. 16.H.6.8.39.E.3.30. 15.E.4.fol.1.b.27.H.8.24

(b) A name of purchase. 2.H.4.25. 1.H.5.8. 46.E.3.22. 12.Ass.18. 30.E.3.18. 1.Ass.11. 11.H.4.33.9.E.4.49. 13.E.3.Estoppel.231. F.N.B.97.2.

(b) A wife (uxor) is a good name of Purchase, without a christian name, and so it is, if a christian name be added and mistaken, as Em for Emelyn, &c. for utile per inutile non vitiatur. But the Queen, the consort of the King of England, is an exempt person from the King by the common law, and is of ability, and capacity to purchase and grant without the King. Of which see more at large, Sect. 206.

(c) 12.H.7.28.37.H.6.30 10.H.4.3.b.

(c) The Parishioners or Inhabitants, or probi homines of Dale, or the churchwardens, are not capable to purchase lands, but goods they are, unless it were in ancient time when such Grants were allowed.

(d) 32.E.3.barr 261.

(d) An ancient Grant by the Lord to the commoners in such a waste, that a way leading to their common should not be streightned, was good, but otherwise it is of such a Grant at this day.

(e) 33.E.3.grant 83. 18.E.3.50.12.Ass.35. 14.H.6.12.34.Ass.p.11. 40.Ass.p.21.

(e) And so in ancient time a Grant made to a Lord, & hominibus suis tam liberis quam nativis, or the like, was good, but they are not of capacity to purchase by such a name at this day. But yet at this day, if the King grant to a man to have the Goods and cattels, de hominibus suis, or de tenentibus suis, or de residentibus infra feodum, &c. it is good, for there they are not named as purchasers or takers, but for another mans benefit, who hath capacity to purchase or take.

(f) Bract.lib.4.tract.1.c. 20.Britton fol. 121,122. 3.E.3.78.25.E.3.43. 26.Ass.61.30.Ass.16. 46.E.3.22.39.E.3.17. 3.H.6.25.19.H.6.2. 30.H.6.1.34.H.6.19. 11.H.4.27.9.E.4.29. 5.E.4.46.65.14.H.7. 11.20.Eliz.Dier.259. 8.E.3.436.29.E.3.25. 1.H.4.3.H.6.26. 19.H.6.2. 34.H.6.19.5.E.4.55. 27.H.8.11.1.H.5.5. 18.E 3.32.27.E.3.85. 8.E.3.427.7.H.6.29. 3.H.5.9.

(f) And regularly it is requisite that the purchaser be named by the name of baptism and his surname, and that special heed be taken to the name of baptism, for that a man cannot have two names of baptism, as he may have divers surnames. (g) And it is not safe in Writs, Pleadings, Grants, &c. to translate surnames into latine. As if the surname of one be Fitzwilliam, or Williamson, if he translate him to filius Willi. if in truth his father had any other christian name than William, the writ, &c. shall abate, for Fitzwilliam or Williamson is his surname, whatsoever christian name his father had, therefore the Lawyer never translates surnames. And yet in some cases, though the name of baptism be mistaken, (as in the case before put of the wife) the Grant is good.

(g) 40.E.3.22.Fitzwilliã 24.E.3.64.Fitz John. 39.E.3.24.Fitzrobert. 27.E.3.85.tit.grant 67. 18.E.3.23.24 18.E.4. 8.b.14.H.7.31,32. 12.E.4.8.5.E.3.Vouch. 179.27.E.3.85.where the proper name is mistaken

So if if lands be given to Robert Earl of Pembroke, where his name is Henry, to George bishop of Norwich, where his name is John; and so of an Abbot, &c. For in these and the like cases there can be but one of that Dignity or name. And therefore such a Grant is good, albeit the name of baptism be mistaken. If by licence lands be given to the Dean and chapter of the holy and individed Trinity of Norwich, this is good, although the Dean be not named by his proper name, if there were a Dean at the time of the Grant, but in pleading he must shew his proper name. And so on the other side, if the Dean and chapter make a lease without naming the Dean by his proper name, the leale is good, if there were a Dean at the time of the leale, but in pleading, the proper name of the Dean must be shewed; and so is the book of 18. Ed. 4. to be intended, for the same Judges in 13. E. 4. held the Grant good to a Mayor, Aldermen, and commonalty, albeit the Mayor was not named by his proper name, but in pleading it must be shewed, as it is there also holden. If a man be baptised by the name of Thomas, and after at his confirmation by the bishop he is named John, he may purchase by the name of his confirmation. And this was the case of Sir Francis Gowdye, late chief Justice of the court of common-pleas, whose name of baptism was Thomas, and his name of confirmation Francis, and that name of Francis by the advice of all the Judges, in Anno 36. H. 8. he did bear, and after used in all his purchases and grants.

(h) 22 R.2.brē.936. 12.R.2.fesfments 58. 9.E.3.14.46.E.3.21. 3.H.6.26.34.H.6.19. 1.H.7.29.5.E.2.brē.741. 14.H.7.11.

(h) And this doth agree with our ancient books, where it is holden that a man may have divers names at divers times, but not divers christian names. And the court said, that it may be that a woman was baptised by the name of Anable, and 40. years after she was confirmed by the name of Douce, and then her name was changed, and after she was to be named Douce, and that all purchases, &c. made by her by the name of baptism before her confirmation remain good, a matter not much in use, not requisite to be put in ure, but yet necessary to be known.

(i) 17.E.3.29.18.E.3.59. 30.E.3.18.11.H.4.84. Pl.Com.525.21.R.2.devise. 41.E.3.19.15.E.3. Counter. Plea de vouch. 43.35.Ass.13.37.H.6.30. 11.E.4.2.7.H.4.5. 40.E.3.9.37.H.8. Nosme 40.Br.

(i) But purchases are good in many cases by a known name, or by a certain description of the person, without either surname, or name of baptism, as Uxori I. S. as hath been said, or primogenito filio, or secundo genito filio, &c. or filio natu minimo I. S. or seniori puero, or omnibus filiis, or filiabus I. S. or omnibus liberis seu exitibus of I. S. or to the right heirs of I. S.

(k) 15.H.7.14.

(k) But if a man do infranchise a Villein, cum tota sequela sua, that is not sufficient to infranchise his children born before, for the incertainty of the word sequela.

(l) 18.E.3.437.29.E.3.44. 19.E.4.11.21.E.4.19. 7.H.6.29.

(l) But regularly in writs, the demaundant or tenant is to be named by his christian name and surname, unless it be in cases of some corporations or bodies politique.

(a) 39.E.3.11.24. 17.E.3.42. 35.Ass.13.41.E.3.19.

(a) A bastard having gotten a name by reputation may purchase by his reputed or known name to him and to his heirs, although he can have no heir but of his body. A man makes a lease to B. for life, remainder to the eldest issue male of B. and the heirs males of his body. B. hath issue a bastard son, he shall not take the remainder, because in law he is not his issue; for qui ex damnato coitu nascuntur inter liberos non computentur. And as Littleton saith, A bastard is quasi nullius filius, and can have no name of reputation as soon as he is born. (b) So it is if a man make a lease for life to B. the remainder to the eldest issue male of B. to be begotten of the body of Jane S. whether the same issue be legitimate or illegitimate. B. hath issue a bastard on the body of Jane S. this son or issue shall not take the remainder, for (as it hath been said) by the name of issue, if there had been no other words he could not take, and (as it hath been also said) a bastard cannot take, but after he hath gained a name by reputation, that he is the son of B. &c. (c) And therefore he can take no remainder limited before he be born, but after he be born, and that he hath gained by time a reputation to be known by the name of a son, then a remainder limited to him by the name of the son of his reputed father is good. But if he cannot take the remainder by the name of issue at the time when he is born he shall never take it. And so it seemeth, and for the same cause, if after the birth of the issue, B. had married Jane S. so as he became bastard eigne, and had a possibility to inherit, yet he shall not take the remainder.

Vid.Sect.188.

(b) So it was resolved. M.38.& 39.Eliz.in Bre. de errore. for land in Portington in com. Salop.

(c) 39.E.3.11.24. 35.Ass.13. 41.E.3.19.17.E.3.42.

Persons deformed having humane shape, ideots, mad men, lepers, deaf, dumb, and blind, minors, and all other reasonable creatures have power to purchase and retain lands or tenements. (d) But the common law doth disable some men to take any estate in some particular things: As if an Office either of the Grant of the King or subject, which concerns the administration, proceeding, or execution of Justice, or the Kings revenue, or the Commonwealth, or the interest, benefit, or safety of the subject, or the like; if these, or any of them be granted to a man that is unexpert, and hath no skill and science to exercise or execute the same, the Grant is meerly void, and the party disabled by law, and incapable to take the same, pro commodo regis & populi; for only men of skill, knowledge, and ability to exercise the same are capable of the same to serve the King and his people. (e) An infant or minor is not capable of an office of stewardship of the court of a Mannor either in possession or reversion. (f) No man though never so skilful and expert, is capable of a judicial Office in reversion, but must expect until it fall in possession. And see Sect. 378. where bargaining, or giving of mony, or any manner of reward, &c. for Offices there mentioned, shall make such a purchaser incapable thereof, which is worthy to be known, but more worthy to be put in due execution.

(d) 5.E.4.tit. offic.& officer.B.48.Vintors case 5.Mar.Dier.fo.150. Scroggs case.

(e) M.40.& 41.Eliz. in the Kings bench between Scamler and Walters.

(f) Lib.11.fo.2. in Auditor Curles case. Vid.Sect.378. 8.H.7.31.

Some are capable of certain things for some special purpose, but not to use or exercise such things themselves. As the King is capable of an Office, not to use but to grant, &c.

A monster born within lawful matrimony, that hath not humane shape, cannot purchase, much lesse retain any thing. (g) The same law is de professis & mortuis seculo, for they are civiliter mortui, whereof you shall read at large in his proper place, Sect. 200.

(g) Bract.lib.5.fo.421. 415.Britt.ca.22.39. Fleta.lib.6.ca.41. 1.E.3.9.44.E.2.4. 3.H.6.24.21.E.2.Judgement 263.7.H.4.2. 14.H.8.16. Doct. & Stud. 141. Pl.Com.fo.47.Brit.ca. 83.

¶ *Purchase.* In Latine perquisitum, of the Verb perquirere. Littleton describeth it in the end of this chapter in this manner, Item, purchase est appel le possession de trēs ou tenements que home ad per son fait, ou per son agreement, a quel possession il ne avient per title de discent de nul de ses ancestors, ou de ses cosens mes per son fait dem. So as I take it, a purchase is to be taken, when one commeth to lands by conveyance or title, and that disseisons, abatements, intrusions, usurpations, and such like estates gained by wrong, are not said, in law purchases, but oppressions and injuries.

Note that purchasers of lands, tenements, Leases, and hereditaments for good and valuable consideration, shall avoid all former fraudulent and covinous conveyances, estates, grants, charges, and limitations of uses, of or out of the same, (h) by a statute made since Littleton wrote, whereof you may plainly and plentifully read in my Reports, to which I will add this Case: I. C. had a lease of certain land for 60. years, if he lived so long, and forged a lease for 90. years absolutely, and he by indenture reciting the forged lease for valuable consideration bargained, and sold the forged Lease: and all his interest in the land to R. G. It seemed to me that R. G. was no purchaser within the statute of 27. Eliz. for he contracted not for the true and lawful interest, for that was not known to him, for then perhaps he would not have dealt for it, and the visible and known tearm was forged, and although by general words the true interest passed, notwithstanding he gave no valuable consideration nor contracted for it. And of this opinion were all the Judges in Serjeants Inne in Fleetstreet.

(h) 27.Eliz.ca.4. 13.Eliz.ca.5. Lib. 3. fo. 80. 82. 83. Twines case.lib.5.fo.80. Gooches case.lib.5.fo.72. Burrels case.lib.11.fo.74 Pasch.12. Ja.inter Jones pl. and Sir Rich. Groobham def. in ejectione firme in evidence al Jurie.

(i) In ancient time when a man made a fraudulent feoffment, it was said, quod posuit terram illam in brigam, where brigam doth signifie wrangle, contention, or intricacy, for fraud is the mother of them all. (k) And on the other side, purchases, estates, and contracts may be avoided since Littleton wrote by certain Acts of Parliament against Usury above ten in the hundred, in such manner and form, as by those Acts is provided. Which statutes are well expounded in my books of Reports which may be read there. To them that lend money my caveat is, that neither

(i) Hil.18.E.3.coram Rege in thesaur.

(k) 37.H.8.cap.6. 13.Eliz.ca.8 lib.5. fo.69.Burtons case. eodem lib.fo.7.Clairons case.

neither directly nor indirectly, by art, or cunning invention, they take above Ten in the hundred, for they that ſeek by ſleight to creep out of theſe ſtatutes, will deceive themſelves, and repent in the end.

¶ *Purchaſe terres.* Littleton here and in many other places putteth Lands but for an example, for his rule extendeth to ſigniories, rents, advowſons, commons, eſtovers, and other hereditaments of what kind or nature ſoever. Lands and other things to be purchaſed.

¶ *Terre.* Terra, Land in the legal ſignification comprehendeth any ground, ſoil or earth whatſoever, as meadows, paſtures, woods, moores, waters, marſhes, furſes and heath, terra eſt nomen generaliſſimum, & comprehendit omnes ſpecies terræ, but properly terra dicitur à terendo, quia vomere teritur, and anciently it was written with a ſingle r. and in that ſenſe it includeth whatſoever may be plowed, and is all one with arvum ab arando. It legally includeth alſo all caſtles, houſes, and other buildings: for caſtles, houſes, &c. conſiſt upon two things, viz. land or ground, as the foundation and ſtructure thereupon, ſo as paſſing the land or ground, the ſtructure or building thereupon paſſeth therewith. * Land is anciently called Fleth, but land builded is more worthy than other land, becauſe it is for the habitation of man, and in that reſpect hath the precedency to be demanded in the firſt place in a Præcipe, as hereafter ſhall be ſaid. And therefore this element of the earth is preferred before the other elements; firſt and principally, becauſe it is for the habitation and reſting place of man, for man cannot reſt in any of the other elements, neither in the water, aire or fire. For as the heavens are the habitation of Almighty God, ſo the earth hath he appointed as the ſuburbs of heaven to be the habitation of man; Cœlum cœli domino, terram autem dedit filiis hominum. All the whole heavens are the Lords, the earth hath he given to the children of men. Beſides, every thing as it ſerveth more immediatly, or more meerly for the food and uſe of man (as ſhall be ſaid hereafter) hath the precedent dignity before any other. And this doth the earth, for out of the earth commeth mans food, and bread that ſtrengthens mans heart, Confirmat cor hominis, and wine that gladdeth the heart of man, and Oyle that makes him a cheerful countenance. And therefore terra olim Ops mater dicta eſt, quia omnia hæc opus habeant ad vivendum. And the Divine agreeth herewith, for he ſaith, Patriam tibi & nutricem, & matrem, & menſam, & domum poſuit terram Deus, ſed & ſepulchrum tibi hanc eandem dedit. Alſo the waters that yield fiſh for the food and ſuſtenance of man are not by the name demandable in a Præcipe, but the land whereupon the water floweth or ſtandeth is demandable (as for example) viginti acr' tre aqua coopert', and beſides the earth doth furniſh man with many other neceſſaries for his uſe, as it is replenished with hidden treaſures, namely with gold, ſilver, braſs, iron, tyn, lead, and other metals, and alſo with great variety of pretious ſtones, and many other things for profit, ornament and pleaſure. And laſtly, the earth hath in law a great extent upwards, not only of water as hath been ſaid, but of aire and all other things even up to heaven, for cujus eſt ſolum ejus eſt uſque ad cœlum, as it is holden, 14. H. 8. fo. 12. 22. H. 6. 59. 10 E. 4. 14. Regiſt. origin. and in other books.

Pl.Com.168.b.& 170.a & 151. Lib.4.87.b.Lutterels caſe 4.E.3.161.& 6.E.3.283. 8.E.3.377. Temps E.1.Bre.811. 28.H.8.Dyer 47.

* Tr.7.E.3. coram Rege Northampt. in theſaur.

Pſal. 115. 16.

Pſal. 104. 15.

Chryſoſt. hom. 30.

And albeit land, whereof our Author here ſpeaketh, be the moſt firm and fixed Inheritance, and therefore it is called ſolum, quia eſt ſolidum, and fee ſimple the moſt higheſt and abſolute eſtate that a man can have, yet may the ſame at ſeveral times be moveable, ſometime in one perſon, and alternis vicibus in another; nay ſometime in one place, and ſometime in another. As for example, if there be 80. acres of meadow which have been uſed time out of mind of man, to be divided between certain perſons, and that a certain number of acres appertain to every of theſe perſons; as for example, to A. 13. acres to be yearly aſſigned and lotted out, ſo as ſometime the 13. acres lie in one place, and ſometime in another, and ſo of the reſt. A. hath a moveable fee ſimple in 13. acres, and may be parcel of his Mannor, albeit they have no certain place, but yearly ſet out in ſeveral places, ſo as the number only is certain, and the particular acres or place wherein they lie after the year incertain. And ſo it was adjudged in the Kings Bench upon an eſpecial Verdict.

Vid. Sect. 59. where in this caſe livery ſhall be made.

Vide Sect. 658. How theſe 13. acres may be charged.

Hill. 34. Eliz. Rot. 489. in trns inter Weldon & Bridgewater in banco Regis.

If a partition be made between two coparceners of one and the ſelf-ſame land, that the one ſhall have the land from Eaſter until Lammas, to her and to her heirs, and the other ſhall have it from Lammas till Eaſter to her and her heirs, or the one ſhall have it the firſt year, and the other the ſecond year alternis vicibus, &c. there it is one ſelf-ſame land, wherein two perſons have ſeveral Inheritances at ſeveral times. So it is if two coparceners have two ſeveral Mannors by deſcent, and they make partition, that the one ſhall have the one Mannor for a year, and the other the other Mannor for the ſame year, and after that year, then ſhe that had the one Mannor ſhall have the other, & ſic alternis vicibus for ever: and albeit the Mannors be ſeveral, yet are they certain, and therefore ſtronger than Bridgewaters caſe, ſo as this doth make a diviſion of eſtates of Inheritances of lands, viz. Certain or unmoveable, whereof Littleton here ſpeaketh, and incertain and moveable, whereof theſe three caſes for examples have been put, wherein it is to be noted, that the Poſſeſſion is not only ſeveral, but the Inheritance alſo.

Temp. E. 1. tit. partition 21. P. N. B. 62. I. Vide li. 1. fo. 87 per Walmſl. F. N. B. 62. K.

Vide Sect. 184. where advowſons, &c. may be appendant and in gros.

It

By what names, &c. lands, &c. shall passe.

It is also necessary to be seen by what names lands shall passe. (a) If a man hath 20. acres of land, and by deed granteth to another and his heirs, vesturam terræ, and maketh livery of seisin secundum formam cartæ, the land it self shall not pass, because he hath a particular right in the land, for thereby he shall not have the houses, timber-trees, mines, and other real things, parcel of the Inheritance, but he shall have the vesture of the land, (that is) the corn, grass, underwood, swepage, and the like, and he shall have an action of trespass, quare clausum fregit. (b) The same law, if a man grant herbagium terræ, he hath a like particular right in the land, and shall have an action quare clausum fregit, but by grant thereof and livery made, the soil shall not pass, as is aforesaid. (c) If a man let to B. the herbage of his woods, and after grant all his lands in the tenure, possession, or occupation of B. the woods shall pass, for B. hath a particular possession and occupation, which is sufficient in this case, and so it was resolved. (d) So if a man be seised of a River, and by deed do grant separalem piscariam in the same, and maketh livery of seisin, secundum formam cartæ, the soil doth not pass nor the water, for the Grantee may take water there, and if the River become dry, he may take the benefit of the soil, for there passed to the Grantee but a particular right, and the livery being made, secundum formam Cartæ, cannot enlarge the Grant. (e) For the same reason, if a man grant, aquam suam, the soil shall not pass, but the piscary within the water passeth therewith. And land covered with water shall be demanded by the name of so many acres, aqua cooperti, whereby it appeareth that they are distinct things. (f) So if a man grant to another to dig Turves in his land, and to carry them at his will and pleasure, the land shall not pass, because but part of the profits given for trees, mines, &c. shall not pass. (g) But if a man seised of lands in fee by his deed granteth to another the profits of those lands, to have and to hold to him and his heirs, and maketh livery, secundum formam Cartæ, the whole land it self doth pass, for what is the land but the profits thereof, for thereby Vesture, herbage, trees, mines, and all whatsoever parcel of that land doth pass.

(a) Vid. Sect. 279.
24.H.8.6.4.H.7.3.10.H.7.24.
11. H. 7. 21. 14. H. 7. 4. 6.
21. H. 7. 36. 37.
9.H.6.52. 37.H.6.35.
22.E.4.barr 116.
11.H.4.90. 18.E.3. Execution 56. 4.E.3.48. 8.E.3.13.
9.Ass.p.12. 38.E.3.24.
(b) Bract.fo.222.
27.E.3.75. 39.H.6.38.
11.Eliz.Dyer 285.
(c) Pasch. 12. Ia. Inter Dockwray & Points in evidence al Jury in Banke le Roy.
(d) Vide Sect. 279.
Bract.fo.208.
40.E.3.45.Pl.Com.154.
10.H.7.24.28. 7.13.
18.H.6.29. 24.H.6.43.
20.H.6.4. 18.Ed.4.4.
4.E.2.48. 1.E.3.4. 32.E.3. &cir.fac.100.
22.E.4.barr 116.
12.H.3. Ass.427. 34.Ass.11.
13.E.3.tit.entrie.57.
20.E.3.Bre.685.W.2.ca.24.
(e) Tr.11.R.2.in trns. nient. imprimee ne abridg.11.H.7.4.
(f) 7.E.3.342.5.Ass.9.10.
7.Ass.9.
(g) 45.E.3.tit.feoffments & faits 90. 14.H.8.6.
Pl.Com.541.b.F.N.B.fo.8.
17.E.3.Dower.90.

(h) By the grant of the Boilloury of salt, it is said that the soil shall pass, for it is the whole profit of the soil. And this is called Saliva of the French word salvre for a salt pit, and you may read de Saliva in Domesday, and Selda, signifieth the same thing: (i) and where you shall read in Records, de lacerta in profunditate aque salse, there lacerta signifieth a fathom. A man seised of divers acres of wood, Grants to another, omnes boscos suos, all his woods, not only the woods growing upon the land pass, but the land it self, and by the same name shall be recovered in a præcipe, for boscus doth not only include the trees, but the land also whereupon they grow.

(h) 9.Ass.p.12.9.E.3.443.466.
Domesday.
7.R.1.int.fines in Thesaur.
(i) Int.Inquisit.apud Launcast. anno 6.E.1.in Thesaur.
Mich.1.H.5.coram Rege Rot.3.in Thesaur.

(k) The same law if a man in that case grant, omnes boscos suos crescentes, &c. yet the land it self shall pass, as it hath been adjudged. * Frassetum signifieth a wood, or ground that is woody.

(k) Tr.7.Eliz. in banco regis lib.5.fol.11.Ives case.
14.H.8.1. 46.E.3.22.
28.H.8.Dyer 19.
21.H.8.Br.reservat.39.
7.E.6.Dyer.79.
* Glanvil lib.8.cap.3.

(l) If a man hath a wood of Elder trees containing 10. acres, and granteth to another 20. acres Alneti (with an N not a V) the wood of Elders, and the soil thereof shall pass, but no other kind of woods shall pass by that name. Alnetum est ubi alni arbores crescunt. * And fillings are taken for Elders. (m) Salicetum doth signifie a wood of willowes, ubi salices crescunt, these trees in our books are called Sawces. * Selda, is a wood of sallowes, willows, or withies. A hacky ground is called filecetum, ubi filices crescunt. A wood of Ashes is called fraxinetum, ubi fraxini crescunt, and passeth by that name, and, lupulicetum where hops grow, and Arundinetum where Reeds grow. Some say that Dene or Denne, wherof Dena commeth, is properly a Valley or Dale. Dena silvæ, and the like, (n) as drosden, or drusden, signifieth a thicket of wood in a Valley, for druf or dru, signifieth a thicket of wood, and is often mentioned in Domesday. And sometime Dena or Denna signifieth, as villa and denne, a Town.

(l) Domesday Registr.F.N.B.2.
(m) 8.E.2.Wast.111.
7.Ass.18.11.Ass.p.13.
41.E.3.Wast.82.
* Hill.14.E.3.coram Rege Lanc. in Thesaur.
* Inter inquisit apud Lanc. in com.Cornubie coram Justic. Aud.anno 6.E.1. in Thesaur.
the B. of Excesters case.

(o) Cope signifieth a hill, and so doth Lawe, as Stanlawe is saxeus collis. (p) Howe also signifieth a hill. And hope combe, and Stow are Valleys, and so doth clough. And Dunum or Duna, signifieth a hill or higher ground, and therefore commonly the Towns that end in Dun, have hills or higher grounds in them, which we call Downs. It commeth of the old French word Dun.

(n) Domesday.
(o) Camden. 460.151.
(p) Pasch.44.E.3.coram Rege in Thesaur.

(q) In our Latin a wood is called boscus. Grava signifieth a little wood, in old deeds, and Hirst or Hurst a wood, and so doth Holt and Shawe. Twaite signifieth a wood grubbed up, and turned to arable. Stethe or Stede, betokeneth properly a banke of a River, and many times a place, as Stowe doth, and Wic, a place upon the Sea shore, or upon a River. Lea or Ley signifieth pasture.

(q) Hill.13.E.2.Lanc.coram Rege in Thesaur.
Camden Brit.247.
Rot.Par.18.E.1.8.
Breefque de Carliles case.

(r) If a man doth grant all his pastures, pasturas, the land it self imployed to the feeding of beasts doth pass, and also such pastures or feedings, as he hath in another mans soil. Leswes or Lesues, is a Saxon word, and signifieth pastures. (s) Between pastura and pascuum, the legal difference is that pastura in one signification containeth the ground it self called pasture, and by that name is to be demanded. Pascuum feeding, is wheresoever cattel are fed, of what nature soever the ground is, and cannot be demanded in a præcipe by that name.

(r) Pl.com.169.a.
4.E.2.Bre.792.793.
3.E.3.86. 4.E.4.1.
27.H.8.12.

(t) If a man grant omnia prata sua, all his meadowes, the land it self of that kind pass, & dicitur pratum quasi paratum, because it groweth sponte without manurance. (u) A man grant omnes bruerias suas, the soil where heath doth grow passeth, and may be demanded by that name

(s) 20.Ass.Pl.9.
(t) Pl.com.169.a.13.E.3. Bre.241.32.E.3.Entrie 80.
(u) Domesday F.N.B.2.Regist.

in a præcipe, it is derived from bruyer a French word for heath, and it is called Ros in the Brittish tongue.

Roncaria or Runcaria ſignifieth land full of brambles and briers, and is derived of Roucier the French word which ſignifieth the ſame, and as much as ſenticetum. (a) By the grant of omnes Juncarias or joncarias, the ſoile where rushes do grow, doth paſs, for Jonc in French is a Rush, whereof Joncaria cometh. (b) And man grant omnes Ruſcarias ſuas, the ſoile where ruſci i. knebolme, or butchers pricks or broom do grow, ſhall paſs, and ſo in the verſe in the Regiſter it is called, but in F. N. B. fol. 2. in the verie, Piſcaria is put in ſtead of Ruſcaria. And Jumpna commonly of Jonc and nower, a waterish place, and is all one in effect with Joncaria. He that granteth omnes mariſcos ſuos all his fenns and marishgrounds do paſs. Mariſcus is derived of the French word mares or marets; the latin word for it, is palus or locus paludoſus. Mora is derived of the English word more, and ſignifieth a more barren and unprofitable ground than marishes, dangerous for any cattel to go there, in reſpect of myrie and moyſh ſoile, nether ſerves it for getting of turves there: (c) you ſhall read in Record, that ſuch a man perquiſivit treſcent. aer. maretti, &c. this word marettum is derived of mare the ſea, and tego, and properly ſignifieth a moorish and gravelly ground, which the ſea doth cover and overflow at a full ſea, and lyeth between the high water mark, and the low water mark, intra fluxum & refluxum maris. By grant of theſe particular kinds, the lands of theſe particular kinds only do paſs, but as hath been ſaid by the grant of land in general, all theſe particular kinds, and ſome others do paſs. Non mihi ſi centum linguæ ſint oraque centum, Omnia terrarum percurrere nomina poſſem. And therefore let us turn our eye to general words, which do include lands of ſeveral ſorts and qualities. (d) By the name of an Honor, which a ſubject may have, divers mannors and lands may paſs. So by the name of an Iſle Inſula, many mannors lands and tenements may paſs.

Holme or bulmus ſignifieth an Iſle or fenny ground. *A Commote is a Seigniory, and may include one or divers mannors; (e) By the name of a caſtle, one or more mannors may be conveyed, & è converſo, by the name of a mannor, &c. a caſtle may paſs. In Domeſday I read Comes Alanus habet in ſuo caſtellatu 200. maneria, &c. præter caſtellariam habet 43. maneria, and in that book a caſtle is called caſtellum, and caſtrum, and domus defenſibilis, and manſus muralis. (f) But note by the way, that no ſubject can build a caſtle or houſe of ſtrength imbattelled, &c. or other fortreſs defenſible, called in law by the names aforeſaid, and ſometimes domus hernellatæ, or Carnellatæ, imbattellatæ, tenellatæ, machecollatæ, meſe carnelet, &c. without the licence of the King, for the danger which might enſue, if every man at his pleaſure might do it. And they be called imbattlements, becauſe they are defences againſt battels in aſſault. Tenellare or tanellare, is to make holes or loops in walls to ſhoot out againſt the Aſſailants. Machecollare or machecoulare, is to make a warlike device over a gate or other paſſage like to a grate through which ſcalding water, or poudrons, or offenſive things may be caſt upon the aſſailants. But to return to the matter from whence upon this occaſion we are fallen.

By the name of a town Villa, a mannor may paſs. In Domeſday, Alodium (in a large ſenſe) ſignifieth a free mannor, and Alodiarii or Alodarii, Lords of the ſame, and Lannemanni there ſignifie lords of a mannor, having ſocam & ſacam de tenentibus & hominibus ſuis. (g) And by the name of a Mannor, divers townes may paſs, quod olim dicebatur fundus nunc manerium dicitur, by the name of a ferme or fearm firma, houſes, lands, and tenements may paſs, and firma is derived of the Saxon word feormian, or feed or relieve, for in ancient time they reſerved upon their leaſes, cattel and other victual and proviſion for their ſuſtenance. (h) Note a fearm in the North parts is called a Tack, in Lancaſhire a Fermehold, in Eſſex a Milke. But the word fearme, is the general word, and anciently fundus ſignified a fearme and ſometime land. (i) Lands making a Knights fee, ſhall paſs by the grant of a Knights fee de uno feodo militis.

(k) Unum ſolinum or ſolinus terræ in Domeſday book containeth two plow lands and ſomewhat leſs than an hall, for there it is ſaid, Septem Solini, or Solina terræ ſunt 17. carucat'. Una hida ſeu carucata terræ, which is all one as a plow-land, viz. ſo much as a plow can till, ſullerye alſo ſignifieth a plowland. Una virgata terræ, a yard-land, the Saxons called it Girdland, and now the G. is turned to a Y. as in ſome countries 10 in ſome 20 in ſome 24. in ſome 30. &c. (l) Una bovata terræ, an oxgange, or an orgate of land, is as much as an oxe can till. (m) But carucata terræ, and bovata terræ, are words compound, and may contain meadow, paſture, and wood, neceſſary for ſuch tillage. Jugum terræ in Domeſday, containeth half a plow-land. And by all theſe names in the raign of R. 1. lands were uſually demanded and long after.

(n) By the name of a Grange, grangia a houſe or edifice, not only where corn is ſtored up like as in barns, but neceſſary places for husbandry alſo, as ſtables for hay and horſes, and ſtables and ſties for other cattel, and a curtilage, and the cloſe wherein it ſtandeth, ſhall paſs, and it is a French word, and ſignifieth the ſame, as we take it.

(o) Stagnum, in Engliſh a pool, doth conſiſt of water and land, and therefore by the name of

(a) Regiſt. 1. E. 3. 4. F. N. B. 2.
(b) 16. Aſſ. p. 9. Regiſter.

Jampna.

(c) Pak. 41. E. 3. coram Rege Lincoln. rot. 28.
(d) Mag. Cart. c. 31. Walingford. Nott. Bolon. Lanc. &c. Trin. 33. E. corã Rege in Theſ. honor de Hunting. Mich. 9. E. 1. corã Rege in Theſ. 18. E. 2. Aſſ. 377. 26. Aſſ. p. 60. 6. E. 3. 56. 47. E. 3. 21. honor de Peuerel. 49. E. 24. honor de Egles 9. H. 6. 27. 36. H. 8. Dyer 58. honor de Glouc. F. N. B. 265. honor Abbath. de Merle. 5. E. 4. 129. 7. H. 6. 39. 1. E. 3. 4. &c. 13. E. 3. juriſdict. 23. lib. 4. fo. 88. Lutterels caſe. 5. H. 7. 9. 14. H. 4. in recordo longo. 8. H. 4. Pl. Com. 168. 8. H. 7. 1. 4. E. 4. 16.
*13. E. 3. juriſdict. 23.
(e) 26. Aſſ. 54. 29. E. 3. 15. 29. H. 6. travers 4. Bract. fo. 434. 1. E. 3. 4. 5. H. 7. 9. 3. E. 2. Avow. 188 37. H. 6. 26. 18. H. 6. 11. Lib. rubr. ſcac. fol. 18.
(f) In vet. mag. carta. Cap. eſchaetriæ fol. 162. Britton cap. 20. Rot. Parl. 52 E. 3. nu. 34. 6. H. 4. nu. 19. 1. E. 4. ca. 1. Rot. Parliam. 1 E. 3. 2. pars. Alano Charleton. 22. E. 3. 2. pars Thomas Barkley &c.
(g) Lamb. expoſit. verb. ferme. Pl. Com. 195.
(h) Pl. Com. 169. Regiſt. 227. b. eject. firmæ.
(i) 17. E. 3. fo. 8. 5. E. 3. 213 16. E. 2. bre. 165. 12. E. 2. bre. 814.
(k) 1. E. 3. 161. 6. E. 3. 283. 2. E. 3. 5. 35. H. 6. 29. Pl. Com. 168. 7. Aſſ. 18. 11. Aſſ. 13. Lamb. expoſ. verb. Hyda & virgat. terræ. Glanv. lib. ca. Domeſday. Bract. lib. 2. cap. 26. 27. & lib. 5. fo. 434. Regiſt. 78
(l) 5. E. 3. fine 49. 13. E. 3. fine 67. 29. H. 6. 8. 4. E. 3. 159. 8. E. 3. 377. Bract. fol. 180. 269. 431. 5. H. 3. Droit, 66. Pl. Com. 168.
(m) 13. E. 3. bre. 241. 9. E. 3. 57. temps E. 1. bre. 811 Pl. Com. 168.
(n) Pl. Co. 169. Linwood. 44. E. 3. 21. 4. E. 2. 32.
(o) 4. E. 3. tit. feoffments & faits. 79. 14. E. 3. Formdon 34. 34. Aſſ. pl. 11.

Stagnum or a poole, the water and land ſhall paſs alſo. (a) In the ſame manner Gurges a deep pit of water, a gorge or gulf conſiſteth of water or land, and therefore by the grant thereof by that name, the ſoile doth paſs, and a præcipe doth lye thereof, and ſhall lay his eſſoines in taking of fiſhes, as Breames and Roches. In Domeſday it is called guort, gort & gors plurally, as for example, de 3. gorz. mille anguillæ.

(a) 13.E.3.4.4.E.3.143. 8.E.3.381.10.E.3.482. 13.E.3.entry 57. F.N.B.191.h. Domeſday.

(b) Tempſ E.1.bre 861. 4.E.3.5.10.H.7.30. 44.E.3.12.43.E.3.24. 35.H.6.55.3.H.6.2. Domeſday, Bracton lib. 4.fo. 235. Int.adjudicat.coram Rege p.39.lib.2.fo.95. in Theſaur.

(b) So it is of a Forreſt, Chaſe, vivarie, and Warren in a mans own ground, by the grant of any of them, not only the priviledge, but the land it ſelf paſſes, for they are compound. In the book of Domeſday, that is called leuvad, and leuga, and leuved, and leuve, which in Latin is called leuca.

(c) Stadium, or ferlingus ſive ferlingum, or quarentena terræ, is a furlong of Land, and is as much as to ſay, a furrow long, which in ancient time was the eighth part of a mile, and land will paſs by that name. And ſome hold, that by that name land may be demanded. And de ferlingis & quarentenis, you ſhall read divers times in the book of Domeſday, and there you ſhall read In inſula Rex habet unum fruſtum terræ unde exeunt ſex vomeres. Nota fruſtrum ſignifieth a parcell, (d) Warectum or wareccum, or varectum, doth ſignifie fallow; Terra jacet ad Warectum, the land lieth fallow: but in truth the word is vervactum, quaſi vere novo victum ſeu ſubactum, terra novalis ſeu requieta, quia alternis annis requieſcat, (e) Tam culta novalia. (f) By the grant of a meſſuage, or houſe meſuagium, the orchard, garden, or curtilage do paſs, and ſo an acre or more may paſs by the name of a houſe. It is derived of the French word meſe. (g) In Domeſday, a houſe in a city or burrough, is called haga; other houſes are called there manſiones, manſuræ & domus» (h) and in an ancient plea concerning Feverſham in Kent, hawes are interpreted to ſignifie manſiones. In Normans French it is called meſual or meſuil; Bye ſignifieth a dwelling, bye an habitation, & byan to dwell.

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(c) 40.Aſſ.38.4.H.6.14. 35.E.1.ca.6. Anno 10.E.1. inter fines in Theſaur. Ferlingus terræ continet 32.acras. Domeſday. Fruſtrum. vide E.3.tit. common.9. (d) Mich.8.H.3.incip.9. Coram Rege.War.Ro.6. (e) Virg.eglog.1.2. (f) Bract.211.233.22.E. 4.trin.140.pl.cō.168.171 2 3.H.8.Br.feoffments 53 9.Aſſ.p.21.35.H.6.44. pl.com.169. (g) Domeſday. (h) Paſc.30.E.1.coram Rege Kanc.in Theſaur. Statut.de extent manerii Domeſday.

It is to be noted, that in Domeſday there be often named bordarii ſeu borduanni, coſces, coſcet, cotucami, cotarii, are all in effect boxes or husbandmen, or cotagers, ſaving that bordarii, which cometh of the French word borde for a cottage, ſignifieth there boxes holding a little houſe with ſome land of husbandry bigger than a cottage, and coterelli are meer cotagers, qui cotagia & curtilagia tenent.

Villani in Domeſday (often named) are not taken there for bondmen, but had their name de villis, becauſe they had terms, and there did work of husbandry for the lord, and they were ever named vicker bordarii, &c. and ſuch as are bondmen are called there ſervi.

Domeſday. (i) Int.placita coram domino Rege Mich.10.E.3 Rot.26. Lamb.expoſit.verb. Thanus.

(i) Coleberti often alſo named in Domeſday, ſignifieth Tenants in free ſocage by free rent, and ſo it is expounded of record. Radmans and Radchemiſtres, (Rad or rede, ſignifieth firm and ſtable) there alſo often named, theſe are liberi tenentes qui arabant & heriebant ad curiam domini, ſeu falcabant, aut metebant; becauſe their eſtates are firm and ſtable, and they are many times called Sochemans and Sokemanni, becauſe of their plough ſervice.

Dreuchs ſignifieth free tenants of a Mannor there alſo named. Taini or thaini mediocres were freeholders, and ſometime called milites regis, and their land called Tainland, and there it is ſaid, hæc terra TRE. fuit Tainland, ſed poſtea converſa in Reveland. (k) But thainus regis, is taken for a baron, for it is ſaid in an ancient Author, Thainus Regis proximus comiti eſt, & ibidem mediocris thainus, & alibi Baro ſive thainus. Berquarium or Bercaria, cometh of Berc, an old Saxon word, uſed at this day for barks or rindes of trees, and ſignifieth a Tanhouſe, or heath houſe, when barks or rindes of trees are laid to tan withal, and Berquarii are mentioned in Domeſday. It ſignifieth alſo and more legally a ſheep-coat, of the French word Bergerie.

(k) Lib.Rub.cap.15 & ca 41. & 76.W.2.c.46. 7.H.4.38. Lib.dentries tit.Aſſ. corps pol.2. Domeſday.

(l) By Vaccaria in law, is ſignified a Dairy houſe, derived of vacca the cow. In Latin it is, Lactarium or Lactitium, and vaccarius is mentioned in Domeſday. And Fleta maketh alſo mention of porcaria a ſwinerye.

(l) 7.H.4.38. Fleta lib.2.cap.35. Domeſday. 10.R.1.Inter fines.

The content of an Acre is known, the name is common to the Engliſh, German, and French. In legal latin it is called Acra, which the Latiniſts call jugerum. In Domeſday it is called Arpen prati, ſilvæ, &c. 10.R.1. inter fines, Acra in Cornwal continet 40. perticatas in longitudine, 4. in latitudine & quælibet perticata de 16. pedibus in longitudine.

(m) By the grant of a Selion of land, Selio terræ, a ridge of land, which containeth no certainty, for ſome be greater and ſome be leſſer, and by the grant de una porca, a ridge doth paſs, Selio is derived of the French word Sellon for a ridge.

(m) 9.E.3.39.Tempſ E.1. Br.866.Mich.30.E.1. coram Rege Gloc.in Theſaur.

(n) By the grant de centum libratis terræ, or 50 libratis terræ, or centum ſolidatis terræ, &c. land of that value paſſeth, and ſo of more or leſs, and in ancient time by that name it might have been demanded. (o) And many things may paſs by a name, that by the ſame name cannot be demanded by a præcipe (for that doth require more preſcript form) but whatſoever may be demanded by a præcipe, may paſs by the ſame name by way of grant.

(n) Bract.fo.377.431.43. E.3.27. Regiſt.fo.1.94.248.249. F.N.B.fo.87.F.I.

(o) Regula.

Frythe is a plain between woods, and ſo is lawnd or lownd, Combe, hope, dene, glyn, hawgh, howgh ſignifieth a Valley. Howe, hoo, knol, law, peu, and cope a hill. Ey, Ing and worth ſignifieth a watry place or water. Faleſia is a bank or hill by the ſea ſide, it cometh of falaize, which ſignifieth the ſame: of all theſe you ſhall read in ancient books, charters, deeds, and

(p) 7.R.1.inter fines Suſſex.

and records, and to the end that our ſtudent ſhould not be diſcouraged for want of knowledge when he meeteth with them (neſcit enim generoſa mens ignorantiam pati) we have armed him with the ſignification of them, to the end he may proceed in his reading with alacrity, and ſet upon, and know how to work into with delight theſe rough mines of hidden treaſure.

(m) By the name of Minera or fodina plumbi, &c. the land it ſelf ſhall paſs in a grant if livery be made, and alſo be recovered in an aſſiſe, & ſic de ſimilibus.

(m) 17.E.3.7.43.E.3.35.b Regiſt.65.10.H.7.21. Pl.Com 191.195. Bract.211.326.

By the grant of a ſouldcourſe or the like, lands & tenements may paſs. (n) Tenementum, Tenement is a large word to paſs, not only lands and other inheritances, which are holden, but alſo offices, rents, commons, profits apprender out of lands and the like, wherein a man hath any frank-tenement, and whereof he is ſeiſed, ut de libero tenemento, But hæreditamentum, Hereditament, is the largeſt word of all in that kind, for whatſoever may be inherited is an hereditament, be it corporeal or incorporeal, real or perſonal or mixt.

(n) 45.E.3. Vouchee 72. 33.E.3. grant 102. 11.H.6.22.27.14.E.4.4. 20.Aſſ.p.9. 3.E.4.19.1..H.7.25.

(o) A man ſeiſed of lands in fee hath divers Charters, deeds, and evidences, and maketh a feoffment in fee, either without warrantie or with warrantie only againſt him and his heirs, the purchaſer ſhall have all the charters, deeds and evidences, as incident to the lands, and ratione terræ, to the end he may the better defend the land himſelf, having no warrantie to recover in value, for the evidences are as it were the ſinews of the land, and the feoffor being not bound to warrantie, hath no uſe of them. But if the feoffor be bound to warrantie, ſo that he is bound to render in value, then is the defence of the title at his peril, and therefore the feoffee in that caſe ſhall have no deeds that comprehend warrantie, whereof the feoffor may take advantage. Alſo he ſhall have ſuch charters as may ſerve him to deraigne the warrantie paramount; Alſo he ſhall have all deeds and evidences, which are material for the maintenance of the title of the land, but other evidences which concern the poſſeſſion, and not the title of the land, the feoffee ſhall have them.

(o) Lib.1.fo.1 & 2. in Seignior Buckhurſts caſe 44.E.3.11.b.39.E.2.17.a. 19.H.6.85.b.4.H.6.a. 10.E.4.9.b.18.E.4.12.15. 6.H.7.3.b. H.7.33.a.

¶ *Aver & tener.* Theſe two words do in this place prove a double ſignification, viz. aver, to have an eſtate of inheritance of lands deſcendible to his heirs, and tener, to hold the ſame of ſome ſuperiour lord.

There have been eight formal or orderly parts of a deed of feoffment, viz. 1. the premiſſes of the deed implyed by Littleton. 2. the habendum whereof Littl. here ſpeaketh. 3. the tenendum mentioned by Littleton. 4. the Reddendum. 5. the clauſe of warrantie. 6. the In cujus rei teſtimonium, comprehending the ſealing. 7. The date of the deed containing the day, the moneth, the year, and ſtile of the King, or of the year of our Lord. (p) Laſtly, the clauſe of his teſtibus, and yet all theſe parts were contained in very few and ſignificant words. (q) Hæc fuit candida illius ætatis fides & ſimplicitas, quæ pauculis lineis omnia fidei firmamenta poſuerunt.

Vid. Sect. 40. & 370 371. many things de cartis & factis. Fleta lib.3.cap.14. Britton 100.101. Bracton lib.5.fo.396.a. 399.38.H.6.33.26. Pl.Com. Wrotesleys caſe fol.96.

(p) Vid. Throgmortons caſe Pl.Com.

(q) Lib.6.fo.4.2. in Sir Anthony Mildmayes caſe Vid. Sect. 278.

The office of the premiſes of the deed is two fold. Firſt, rightly to name the feoffor and the feoffee. And ſecondly to comprehend the certainty of the lands or tenements to be conveied by the feoffment, either by expreſs words, or which may by reference be reduced to a certainty; for, certum eſt quod certum reddi poteſt. the habendum alſo hath two parts, viz. firſt, to name again the feoffee, and ſecondly to limit the certainty of the eſtate. The Tenendum at this day where the fee ſimple paſs, muſt be of the chief lords of the fee. And of the Reddendum more ſhall be ſaid in his proper place, in the chapter of Rents. Of the clauſe of warranty more ſhall be ſaid in the chapter of warranties. In cujus rei teſtimonium ſigillum meum appoſui was added, for the Seal is of the eſſential part of the deed. The date of the deed many times Antiquity omitted, and the reaſon thereof was for that the limitation of preſcription or time of memory did often in proceſs of time change, and the law was then holden that a deed, bearing date, before the limited time of preſcription was not pleadable, and therefore they made their deeds without date, to the end they might alledge them within the time of preſcription. And the date of the deeds was commonly added in the raign of E. 2. and E. 3. and ſo ever ſince.

Brit. fo. 101.

(r) Lamb. expoſit. verb. terra ex ſcripto. Vid. Forteſcue cap. 32. ſee the ſecond part of the Inſtitut. cap. 38. 12.E.2.c.2. ſee the ſecond part of the Inſtitutes. Marlbr. cap. 6. & cap. 14.

And ſometime antiquitie added a place, as Datum apud D. which was with diſadvantage of the feoffee, for being in general, he may alledge the deed to be made where he will. And laſtly, Antiquitie did adde, his teſtibus in the continent of the deed after the In cujus rei teſtimonium, written with the ſame hand that the deed was, which witneſſes were called, the Deed read, and then their names entred. (r) And this is called charter land, and accordingly the Saxons called it Bockland, as it were booke land. Which clauſe of his teſtibus in ſubjects deeds continued until and in the raign of H. 8. but now is wholly omitted. And it appeareth by the ancient Authors and Authorities of the Law; that before the Statute of 12. E. 2. ca. 2. Procels ſhould be awarded againſt the witneſſes named in the Deed, teſtes in cartâ nominatos, (s) and that the ſame Statute was but an affirmance of the Common law, which not being well underſtood, hath cauſed diverſitie of opinions in our books. But the delay therein was ſo great, and ſometimes (though rarely) by exceptions againſt thoſe witneſſes, which being found true, they were not to be ſworn at all, neither to be joyned to the Jury, nor as witneſſes, (t) as if the witneſs were infamous, for example, if he be attainted of a falſe verdict, or of a conſpiracy at the

(s) Brit. fo. 65.101. 11.E.3.proces.170. 6.H.3.proces.209. 8.H.3.proces.210. 4.E.2.gard.119.

(t) Mirror ca.4.ſect. de infamies & perjurie. Glanvil.lib.2.cap.15. Bract.lib.5.fo.288.292. Brit.fo.134.135.101. Fleta lib.5.ca.21. 8.E.2.Aſſ.396. 2.E.3.22.24.E.3.34.

43.E.3.Conſpir.11.
27.Aſſ.29.
33.H.6.55.21.H.6.30.
(c) Forteſcu. cap.26.
Pat. 55.H.3.m.3.
Stanf.Pl.Cor.174.a.

(f) Forteſcu.ca.25.

(e)22.Aſſ.12.& 41.
23.Aſſ.11.
19.E.2.tit.Aſſ.409.

(f)34.E.1.Proces208.

(a)34.E.1.tit.proces 208
11.Aſſ.p.19.20.12.Aſſ.p.
1.12.41.18.Aſſ.p.11.
22.Aſſ.15.23-Aſſ.15.
40.Aſſ.23.48.Aſſ.p.5.
21.H.6.30.

(b)48.E.3.30.12.H.6.fo.
6.a.50.E.3.16.43.E.3.32
12.H.4.9.19.E.2.Aſſ.408
Paſch.14.E.3.coram rege
Devon.in Theſaur.
Fleta lib.6.cap.6.
F.N.B.106.h.& 97.c.
(c)Mirror.ca.3.
Pl.Com.fo.10.
Bract.lib.5.fo.400.

Fleta lib.6.ca.33.
3.E.3.290.39.E.3.21.b.

Glanvil lib.10.ca.12.
Fleta lib.6.ca.33.

Paſch. 10. Ja. in Com.
Banco upon the Stat. of
Bankrouts.

(d)Fleta lib.2.ca.44.
13.E.1.tit.Vill.36.37.
19.E.2.Ibid.32.
(e) Tr.8.Ja.in com.banco
Smithes caſe.
In evidence upon an in-
formation upon the Sta-
tute of Uſury.
Brit.fo.134.

ſuite of the King, or convicted of perjury, or of a Præmunire, or of forgerie upon the ſtatute of 5. Eliz. cap. 14. and not upon the ſtatute of 1. H. 5. cap. 3. or convict of felony, or by judgment loſt his eares, or ſtood upon the pillory or tumbrell, or been ſtigmaticus branded, or the like whereby they become infamous for ſome offences, quæ ſunt minoris culpæ ſunt majoris infamiæ. (c) If a champion in a writ of right become recreant or coward, he thereby loſeth liberam legem, and thereby becomes infamous, and cannot be a witneſs, for regularly he that loſeth liberam legem, becometh infamous, and can be no witneſs. Or if the witneſs be an infidel, or if non ſane memoriæ, or not of diſcretion, or a party intereſſed, or the like. (d) But often-times a man may be challenged to be of a Jury, that cannot be challenged to be a witneſs; and therefore though the witneſs be of neareſt alliance, or kindred, or of counſel, or tenant, or ſervant to either partie, (or any other exception that maketh him not infamous, or to want underſtanding, or diſcretion, or a party in intereſt) though it be proved true, ſhall not exclude the witneſs to be ſworn, (e) but he ſhall be ſworn, and his credit upon the exceptions taken againſt him left to thoſe of the Jury, who are tryers of the fact, inſomuch as ſome Books have ſaid, that though the witneſs named in the Deed be named a Diſtreſſor in the writ, yet he ſhall be ſworn as a witneſs to the Deed. (f) A witneſs amongſt others named in a Deed was outlawed, and no Proceſs was awarded againſt him by the ſtatute, becauſe he was extra legem, and an outlawed perſon cannot be an Auditor. And the Court in ſome books have ſaid, that they have not ſeen witneſſes challenged, which is regularly to be underſtood with the limitations above-ſaid, but ſuch as are returned to be of a Jury, are to be challenged for the cauſes aforeſaid for outlawry, and divers other cauſes (for the which a witneſs cannot be challenged) and ſuch Proceſs againſt witneſſes is vaniſhed. But ſeeing the witneſſes named in a Deed ſhall be joyned to the Inqueſt, and ſhall in ſome ſort joyn alſo in the verdict (in which caſe if Jury and witneſſes find the Deed that is denied to be the Deed of the partie, the adverſe partie is barred of this attaint, becauſe there is more than 12. that affirm the verdict.) It is reaſon that in that caſe of joyning, ſuch exception ſhall be taken againſt the witneſs as againſt one of the Jury, becauſe he is in the nature of a Juror. (a) And therefore to put one example, if he be outlawed in a perſonal action he cannot be joyned to the Jury, but yet that is no exception againſt him to exclude him to be ſworn as a witneſs to the Jury. And the reaſon of all this is, for that if he with others ſhould joyn in verdict with the Jury in affirmance of the Deed, the party ſhould be barred of his Attaint. But note, there muſt be more than one witneſs, that ſhall be joyned to the Inqueſt. And albeit they joyn with the Jury, and find it not his Deed, notwithſtanding this joyning, the party ſhall have his attaint, for it is a maxim in law, (b) That witneſſes cannot teſtifie a negative, but an affirmative. And if one of the witneſſes named in the Deed be one of the panel, he ſhall be put out of the panel, and all theſe ſecrets of law do notably appear in our books.

To ſhut up this point, it is to be known, (c) that when a trial is by witneſſes, regularly the affirmative ought to be proved by two or three witneſſes, as to prove a ſummons of the tenant, or the challenge of a Juror, or the like. But when the trial is by verdict of 12. men, there the judgment is not given upon witneſſes, or other kind of evidences, but upon the verdict, and upon ſuch evidence as is given to the Jury they give their verdict. And Bracton ſaith, there is probatio duplex, viz. viva, as by witneſſes viva voce, and mortua, as by Deeds, writings, and inſtruments. And many times Juries, together with other matter, are much induced by præſumptions, whereof there be three ſorts, viz. violent, probable, and light or temerary. Violenta præſumptio is many times plena probatio, as if one be run through the body with a ſword in a houſe, whereof he inſtantly dieth, and a man is ſeen to come out of that houſe with a bloody ſword, and no other man was at that time in the houſe. Præſumptio probabilis moveth little, but, Præſumptio levis ſeu temeraria, moveth not at all. So it is in the caſe of a Charter of feoffment, if all the witneſſes to the Deed be dead (as no man can keep his witneſſes alive, and time weareth out all men) then violent præſumption which ſtands for a proof is continual and quiet poſſeſſion, for ex diuturnitate temporis omnia præſumuntur ſolenniter eſſe acta, alſo the deed may receive credit, per collationem ſigillorum, ſcripturæ &c. & ſuper fidem cartarum mortuis teſtibus erit ad patriam de neceſſitate recurrendum.

Note, it hath been reſolved by the Juſtices, that a wife cannot be produced either againſt or for her husband, quia ſunt duæ animæ in una carne, and it might be a cauſe of implacable diſcord and diſſention between the husband and the wife, and a means of great inconvenience, but (d) in ſome caſes women are by law wholly excluded to bear teſtimony, as to prove a man to be a Villein; mulieres ad probationem ſtatus hominis admitti non debent. It was alſo agreed by the whole Court (e) that in an Information upon the ſtatute of uſury, the party to the uſurious contract ſhall not be admitted to be a witneſs againſt the Uſurer, for in effect he ſhould be teſtis in propria cauſa, and ſhould avoid his own bonds and aſſurances, and diſcharge himſelf of money borrowed, and though he commonly raiſe up an Informer to exhibit the Information, yet in rei veritate he is the party. And herewith in effect agreeth Brit-

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ton, that he that challengeth a right in the thing in demand, cannot be a witneſs, for that he is a party in intereſt. But now let us return to that from the which by way of digreſſion (upon this occaſion) we are fallen.

And the Ancient charters of the King which paſſed away any Franchiſe or Revenue of any Eſtate of Inheritance, had ever this clauſe of hiis teſtibus, of the greateſt men of the Kingdom, as the Charters of creation of Nobility, yet have at this day: when hiis teſtibus was omitted, and when teſte me ipſo came in into the Kings Grants, you ſhall read in the ſecond part of the Inſtitutes, magna charta, cap. 38. I have tearmed the ſaid parts of the Deed, formal or orderly parts, for that they be not of the eſſence of a Deed of Feoffment, for if ſuch a Deed be without præmiſſes, habendum, tenendum, reddendum clauſe of warranty, the clauſe of In cujus rei teſtimonium, the Date, and the clauſe of hiis teſtibus, yet the Deed is good. (f) For if a man by Deed give lands to another, and to his heirs without more ſaying, this is good, if he put his Seale to the Deed, deliver it, and make livery accordingly. (g) So this is if A. give lands, to have and to hold, to B. and his heirs, this is good, albeit the Feoffee is not named in the Premiſſes. And yet no well adviſed man will truſt to ſuch Deeds, which law by conſtruction maketh good, ut res magis valeat, but when form and ſubſtance concur, then is the Deed fair and abſolutely good. The ſealing of charters and Deeds is much more Ancient than ſome, out of Error, have imagined, for the charter of the King Edwyn, brother of King Edgar, bearing date Anno Domini, 956. made of the land called Jeckles in the Iſle of Ely, was not only ſealed with his own ſeale (which appeareth by theſe words, Ego Edwinus gratia dei totius Brittanniæ telluris Rex meum donum proprio ſigillo confirmavi) but alſo the Biſhop of Wincheſter put to his ſeale, Ego Elfwinus Wintoñ Eccleſiæ divinus ſpeculator proprium ſigillum impreſſi. And the charter of King Offa, whereby he gave the Peter-pence, doth yet remain under ſeale. But no King of England before, or ſince the conqueſt, ſealed with any ſeale of Arms, before King R. I. but the ſeale was the King ſitting in a chair on the one ſide of the ſeale, and on horſe-back on the other ſide in divers forms. And King R. I. ſealed with a ſeale of two Lyons, for the conqueror for England bare two Lyons, and King John in the Right of Aquitain (the Duke whereof bare one Lyon) was the firſt that bare three Lyons, and made his ſeale accordingly, and all the Kings ſince have followed him. And King E. 3. in Anno 13. of his Reign, did quarter the Arms of France with his three Lyons, and took upon him the Title of King of France, and all his ſucceſſors have followed him therein.

(f) Mirror ca. 1. ſect. 6. and cap. 5. ſect. 1. Glanvil. lib. 10. ca. 12. Bract. lib. 5. fol. 396. Flet. lib. 6. c. 32. Brit. f. 66

(g) Vid. tearms of the law, verb. faits. Vid. Glanvil. lib. 10. c. 12. Mir. c. 1. ſect. 3. & c. 3.

In Ancient charters of Feoffment there was never mention made of the delivery of the Deed, or any livery of ſeiſin indorſed, for certainly the witneſſes named in the deed, were witneſſes of both: and witneſſes either of delivery of the deed, or of livery of ſeiſin by expreſs tearms was but of latter times, and the reaſon was in reſpect of the notoriety of the Feoffment. And I have known ſome Ancient Deeds of Feoffment having livery of ſeiſin indorſed, ſuſpected, and after detected of forgery. As if a deed in the ſtile of the King name him Defenſor fidei before 13. H. 8. or ſupreme head before 20. H. 8. at what time he was firſt acknowledged ſupreme head by the clergy, albeit the King uſed not the ſtile of ſupreme head in his charters, &c. till 22. H. 8. or King of Ireland, before 33. H. 8. at which time he aſſumed the Title of the King of Ireland, being before that called Lord of Ireland, it is certainly forged, & ſic de ſimilibus.

21. H. 8. cap. 16.

And ſome have obſerved that Grace was attributed to King H. 4. Excellent Grace to King H. 6. Majeſty to King H. 8. and before, the King was called, Soveraign Lord, Leige Lord, Highneſs, and Kingly Highneſs, which in latine in legal proceedings is called regia celſitudo, as the beginning of the Petition of Right to the King is, humillimè ſupplicavit veſtræ celſitudini regiæ, &c. and the like. And upon this occaſion it ſhall not be impertinent, ſeeing it is part of the formal deed, to ſet down the ſeveral ſtiles of the Kings of England ſince the conqueſt.

Vid. 2. H. 4. ca. 15. where Royal Majeſty is attributed to the King, and Crimen læſæ Majeſtatis farr more ancient.

William the Conqueror commonly ſtiled himſelf Willielmus Rex, and ſometimes Willielmus Rex Anglorum. And the like did William Rufus, and ſometimes Willielmus dei gratia Rex Anglorum.

Henry the firſt, Henricus Rex Anglorum, and ſometimes Henricus dei gratia Rex Anglorum.

Mawde the ſole daughter and heir of H. 1. wrote Matildis imperatrix Henrici regis filia & Anglorum domina. Divers of whoſe creations and Grants I have ſeen.

King Stephen uſed the ſtile that King H. 1. did.

Henry the 2. Fitz Emprice omitted dei gratia, and uſed this ſtile, Henricus rex Angliæ, dux Normaniæ, & Aquitaniæ, & comes Andegaviæ, he having the Dutchy of Aquitain, and Earldome of Poitiers in the Right of Elianor his wife heir to both: And the Earledome of Anjowe, Tourny and Main, as ſon and heir to Jeffery Plantagenet by the ſaid Mawde his wife, daughter and ſole heir of King H. 1. She was firſt married to Henry the Emperor, and after his death to the ſaid Jeffery Plantagenet. Which Dutchy of Aquitain doth include Gaſcoigne and Guian.

King R. 1. uſed the ſtile that H. 2. his father did, yet was he King of Cyprus, and after of Jeruſalem, but never uſed either of them.

King John uſed that ſtile, but with this addition Dominus Hiberniæ, and yet all that he had in Ireland was conquered by his father King H. 2. which title of Dominus Hiberniæ, he aſſumed, as annexed to the crown, albeit his father, in the 23. year of his Reign, had created him King of Ireland in his life time.

King H. 3. ſtiled himſelf as his father King John did, untill the 44. year of his Reign, and then he left out of his ſtile Dux Normaniæ, & comes Andegaviæ, and wrote only Rex Angliæ, dominus Hiberniæ, & dux Aquitaniæ.

King E. 1. ſtiled himſelf in like manner as King H. 3. his father did, Rex Angliæ, dominus Hiberniæ, & dux Aquitaniæ. And ſo did King E. 2. during all his Reign. And King E. 3. uſed the ſelf ſame ſtile until the 13. year of his Reign, and then he ſtiled himſelf in this form Edwardus dei gratia Rex Angliæ & Franciæ, & dominus Hiberniæ, leaving out of his ſtile dux Aquitaniæ. For he was King of France, as ſon and heir of Iſabel wife of King E. 2. daughter and heir of Philip le beau King of France, he firſt quartered the French Armoyes with the Engliſh in his great Seale, Anno domini 1338. & regni ſui 14.

King R. 2. and King H. 4. uſed the ſame ſtile that King E. 3. did. And King H. 5. until the 8. year of his Reign continued the ſame ſtile, and then wrote himſelf, Rex Angliæ hæres & regens Franciæ, & dominus Hiberniæ, and ſo continued during his life.

Vid. Rot. Parliam. anno 1. H. 6. nu. 15. he was ſtiled Rex Franciæ & Angliæ & dominus Hiberniæ.

King H. 6. wrote, Henricus dei gratia rex Angliæ & Franciæ, & dominus Hiberniæ; this King being crowned in Paris King of France uſed the ſaid ſtile 39. years, till he was diſpoſſeſſed of the crown by King E. 4. who after he had reigned alſo about ten years, King H. 6. was reſtored to the crown again, and then wrote, Henricus dei gratia rex Angliæ & Franciæ, & dominus Hiberniæ ab inchoatione regni ſui 49. & recaptionis regiæ poteſtatis primo.

King E. 4. R. 3. and H. 7. ſtiled themſelves, Rex Angliæ & Franciæ, & dominus Hiberniæ.

King H. 8. uſed the ſame ſtile till the tenth year of his Reign, and then he added this word (Octavus) as Henricus octavus dei gratia, &c. In the 13. year of his Reign he added to his ſtile fidei Defenſor. In the 22. year of his Reign, in the end of his ſtile he added ſupremum caput Eccleſiæ Anglicanæ. And in the 23. year of his Reign he ſtiled himſelf thus, Henricus octavus dei gratia Angliæ, Franciæ & Hiberniæ rex, fidei defenſor, &c. & in terra Eccleſiæ Anglicanæ & Hiberniæ ſupremum caput.

King E. 6. uſed the ſame ſtile, and ſo did Queen Mary in the beginning of her Reign, and by that name ſummoned her firſt Parliament, but ſoon after omitted ſupremum caput. And after her marriage with King Philip, the ſtile notwithſtanding that omiſſion was the longeſt that ever was, viz. Philip and Mary by the grace of God King and Queen of England and France, Naples, Jeruſalem and Ireland, Defendors of the Faith, Princes of Spain and Cicily, Archdukes of Auſtria, Dukes of Millain, Burgundy and Brabant, Countees of Hasburgh, Flanders and Tyroll. And this ſtile continued till the fourth and fifth year of King Philip and Queen Mary, and then Naples was put out, and in place thereof both the Cicilies put in, and ſo it continued all the life of Queen Mary.

I need not mention the ſtile of Queen Elizabeth, King James, nor of our Soveraign Lord King Charles, becauſe they are ſo well known, and I fear I have been too long concerning this point, which certainly is not unneceſſary to be known for many reſpects. But to ſhew the cauſes and reaſons of theſe alterations would aſk a Treatiſe of it ſelf, and doth not ſort to the end that I have aimed at. And now let us return to the learning of charters and deeds of Feoffments and Grants.

Very neceſſary it is that witneſſes ſhould be underwritten or indorſed, for the better ſtrengthening of Deeds, and their names (if they can write) written with their own hands. For Livery of ſeiſin see hereafter Sect. 59. and for Deeds, Sect. 66. and of conditional Deeds ſee our Author in his chapter of conditions. And now let us proceed to the other words of our Author.

Livery of ſeiſin incident to a Feoffment. Vide ſect. 59.

¶ *A lay & a ſes heires.* Hæres, in the legal underſtanding of the common law, implyeth that he is ex juſtis nuptiis procreatus, for hæres legitimus eſt quem nuptiæ demonſtrant, and is he to whom lands, tenements, or hereditaments by the Act of God, and right of blood do deſcend of ſome eſtate of Inheritance, for ſolus Deus hæredem facere poteſt non homo: dicuntur autem hæreditas & hæres ab hærendo, quod eſt arctè inſidendo, nam qui hæres eſt, hæret, vel dicitur ab hærendo quia hæreditas ſibi hæret, licet nonnulli hæredem dictum velint quod hæres fuit, hoc eſt dominus terrarum, &c. quæ ad eum perveniunt.

Mirr. cap. 2. ſect. 15. Bract. lib. 2. fol. 62. b. Flet. lib. 6. cap. 1. & 54. & lib. 1. cap. 13. Glanvil. lib. 7. ca. 1. & ca. 12. & 13.

A Monſter which hath not the ſhape of mankind, cannot be heir or inherit any land, albeit it be brought forth within Warriage, (a) but although he hath deformity in any part of his body, yet if he hath humane ſhape he may be heir. Hii qui contra formam humani generis converſo more procreantur, ut ſi mulier monſtroſum, vel prodigioſum enixa, inter liberos non Computentur, partus tamen cui natura aliquantulum ampliaverit vel diminuerit, non tamen ſuperabundanter (ut ſi ſex digitos vel niſi quatuor habuerit) hanc debet inter liberos connumerari.

(a) Bract. lib. 5. fol. 437. 438. Brit. ca. 66. fol. 167. & cap. 83. Fleta lib. 1. ca. 5.

Si

Si inutilia natura reddidit, ut ſi membra tortuoſa habuerit, non tamen is partus monſtroſus. Another ſaith, ampliatio ſeu diminutio membrorum non nocet. (b) A Baſtard cannot be heir, for (as hath been ſaid before) qui ex damnato coitu naſcuntur inter liberos non computentur. Every heir is either a male, or female, or an Hermophrodite, that is, both male and female. And an Hermophrodite (which is alſo called Androgynus) ſhall be heir, either as male or female, according to that kind of the ſex which doth prevail. Hermophradita, tam maſculo, quam fœminæ comparatur ſecundum prævaleſcentiam ſexus incaleſcentis. And accordingly it ought to be baptized. See more of this matter, Sect. 35.

(b) Vid. Sect. 188. 399. Bract. lib. 2. fo. 91. Brit. fo. Fleta li. 2. ca. 5. & l. 6. c. 8. Fleta ubi ſupra. 3. R. 2. entr. cong. 38.

(c) A man ſeiſed of lands in fee hath iſſue an Alien that is born out of the Kings ligeance, he cannot be heir, propter defectum ſubjectionis, albeit he be born within lawful marriage. If made Denizen by the Kings Letters patents, yet cannot he inherit to his father or any other. But otherwiſe is it, if he be naturalized by act of Parliament, for then he is not accounted in law alienigena, but indigena. But after one be made Denizen, the iſſue he hath afterwards ſhall be heir to him, but no iſſue that he had before. If an Alien cometh into England and hath iſſue two ſons, theſe two ſons are indigenæ ſubjects born, becauſe they are born within the realm. And yet if one of them purchaſe lands in fee, and dieth without iſſue, his brother ſhall not be his heir, for there was never any inheritable blood between the father and them, and where the ſons by no poſſibility can be heir to the father, the one of them ſhall not be heir to the other. See more at large of this matter, Sect. 198.

(c) Mirror ca. 1. Ca. 3. Sect. ca. 5. Sect. Bract. lib. 5. fo. 415. 427. Brit. fo. 29. Fleta lib. 6. ca. 47. 13. E. 3. br. 677. 25. E. 3. de natis ultra mare. 31. E. 3. Coſinage 5. 42. E. 3. 2. 11. H. 4. 26. 14. H. 4. 19. 20. 3. H. 6. 55 22. H. 6. 38. 9. E. 4. 7. lib. 7. fo. 1. in Calvyns caſe

If a man be attainted of treaſon, or felony, although he be born within wedlock, he can be heir to no man, nor any man heir to him propter delictum, for that by his attainder his blood is corrupted. And this corruption of blood is ſo high, as it cannot abſolutely be ſalved, and reſtored but by act of Parliament, for albeit the perſon attainted obtain his Charter of pardon, yet that doth not make any to be heir whoſe blood was corrupted at the time of the attainder, either downward or upward. (d) As if a man hath iſſue a ſon before his attainder, and obtaineth his pardon, and after the pardon hath iſſue another ſon, at the time of the attainder, the blood of the eldeſt was corrupted, and therefore he cannot be heir. But if he die living his father, the younger ſon ſhall be heir, for he was not in eſſe at the time of the attainder, and the pardon reſtored the blood as to all iſſues begotten afterwards. But in that caſe if the eldeſt ſon had ſurvived the father, the younger ſon cannot be heir, becauſe he hath an elder brother which by poſſibility might have inherited, but if the elder brother had been an alien, the younger ſon ſhould be heir, for that the alien never had any inheritable blood in him. See more plentifully of this matter, Sect. 646. 647.

1. E. 3. 4. 6. E. 3. 55. 27. E. 3. 77. 3. E. 2. deſcent Br. 64. 31. E. 1. diſcent. 17. 46. E. 3. Petition 20. 26. Aſſ. p. 2. 49. Aſſ. pl. 4. 29. Aſſ. p. 11. 9. H. 5. 9. (d) Stanf. pl. cor. 195. 196 Bracton. lib. 3. fo. 132. 133. 276. & lib. 5. fo. 374. Britton fo. 215. b. Fleta lib. 1. ca. 28.

If a man hath iſſue two ſons, and after is attainted of treaſon or felony, and one of the ſons purchaſe lands, and dieth without iſſue, the other brother ſhall be his heir, for the attainder of the father corrupteth the lineal blood only, and not the collateral blood between the brethren, which was veſted in them before the attainder, and each of them by poſſibility might have been heir to the father, and ſo hath it been adjudged, (*) but otherwiſe in the caſe of the attainte, as hath been ſaid. (e) But ſome have holden that if a man after he be attainted of treaſon or felony have iſſue two ſons, that the one of them cannot be heir to the other, becauſe they could not be heir to their father, for that they never had any inheritable blood in them.

* In the Exchequer Mich 40. & 41 Eliz. in le caſe de Hobby.

(e) Bract. lib. 4. fol. 130. Britton fol. 15. Fleta lib. 1. cap. 58.

(f) One that is born deaf and dumb may be heir to another, albeit it was otherwiſe holden in ancient time. And ſo if born deaf, dumb and blind, for in hoc caſu vitio parcitur naturali, but contract they cannot. Idiots, leapers, madmen, outlaws in debt, treſpaſſes, or the like perſons excommunicated, men attainted in a præmunire, or convicted of hereſie, may be heirs.

(f) Bract. lib. 5. fo. 421. 436. 434. lib. 2. fo. 12. Fleta lib. 6. ca. 39. 47. 14. H. 3. Bre. 877. 32 E. 3. Age 8. 10. E. 3. 535. 18. E. 3. 53. 13. E. 3. Ley 49 (g) 21. E. 3. 39. Panarollus nova rep. 485. &c. Opus eximium 48. b. Lambard de priſciis Anglorum legibus 120. 72. acc.

(g) If a man hath a wife, and dieth, and within a very ſhort time after the wife marrieth again, and within 9. moneths hath a child, ſo as it may be the child of the one or of the other. Some have ſaid, That in this caſe the child may chooſe his father, quia in hoc caſu filiatio non poteſt probari, and ſo is the book to be intended, for avoiding of which queſtion and other inconveniences, this was the law before the Conqueſt, Sit omnis vidua ſine marito duodecim menſibus, & ſi maritaverit perdat dotem.

(h) Bract. lib. 4. ca. 9. fo. 265. lib. 2. fo. 62. b. Fleta lib. 6. ca. 1. Lib. 8. fo. 54. Syms caſe. (i) Mich. 36. & 37. El. Rot 25. Inter Gray and Paulet in the kings bench Stanford 25. b. 18. E. 4. 8. 22. Aſſ. 25. 18. H. 8. 2. (k) 13. E. 3. det. 135. 139. 140. 47. E. 3. 23. 25. E. 3. fo. 48. 26. E. 3. fo.

(h) A man by the Common law cannot be heir to goods or chattels, for hæres dicitur ab hæreditate. (i) If a man buy divers fiſhes, as Carps, Breames, Tenches, &c. and put them in his Pond, and dieth, in this caſe the heir ſhall have them, and not the Executors, but they ſhall go with the inheritance, becauſe they were at liberty and could not be gotten without induſtrie, as by nets, and other engines, otherwiſe it is if they were in a trunk or the like. Likewiſe Deer in a Park, conies in a Warren, and Doves in a dove-houſe, young and old ſhall go to the heir. (k) But of ancient time the heir was permitted to have an action of debt upon a bond made to his Anceſtors and his heires, but the Law is not ſo holden at this day. Vid. 12.

Vid. for an heirelome hæreditarium or principalius, Sect. 12.

(l) It is to be noted that one cannot be heir till after the death of his anceſtor, he is called hæres apparens, heir apparent. (l) Mirror ca. 1. Sect. 3.

In

In our old books and Records there is mention made of another heir, viz. hæres aſtrarius ſo called of Aſtre, that is an harty of an houſe, becauſe the Anceſtor by conveyance hath ſet his heir apparent, and his Family in a houſe and living in his life time, of whom Bracton ſaith thus, (a) Item eſto quod hæres ſit aſtrarius, vel quod aliquis anteceſſor reſtituat hæredi in vita ſua hæreditatem, & ſe dimiſerit, videtur quod nullo tempore jacebit hæreditas, & ideo quod nec relevari poſſit, nec debet, nec relevium dari. (b) For the benefit and ſafety of right heirs contra partus ſuppoſitos, the law hath provided remedy by the writ de ventre inſpiciendo, whereof the Rule in the Regiſter is this; Nota ſi quis habens hæreditatem duxerit aliquam in uxorem & poſtea moriatur ille ſine hærede de corpore ſuo exeunte, per quod hæreditas illa fratri ipſius defuncti deſcendere debeat, & uxor dicit ſe eſſe prægnantem de ipſo defuncto cum non ſit, habeat frater, & hæres breve de ventre inſpiciendo. It ſeemeth by Bracton and Fleta which followed him, that this writ doth lie, Ubi uxor alicujus in vita viri ſui ſe prægnantem fecit cum non ſit, vel poſt mortem viri ſui ſe prægnantem fecit cum non ſit ad exhæredationem veri hæredis, &c. ad querelam veri hæredis per præceptum domini regis, &c. which is to be underſtood according to the Rule of the Regiſter: when a man having lands in fee ſimple dieth, and his wife ſoon after marrieth again, and feins her ſelf with child by her former husband, in this caſe though ſhe be married, the writ de ventre inſpiciendo doth lie for the heir. But if a man ſeiſed of lands in fee (for example) hath iſſue a daughter, who is heir apparent, ſhe in the life of her father cannot have this writ for divers cauſes. Firſt, becauſe ſhe is not heir, but heir apparent, for as hath been ſaid, nemo eſt hæres viventis, and this writ is given to the heir to whom the land is deſcended. And both Bracton and Fleta ſaith, that this writ lyeth ad querelam veri hæredis, which cannot be in the life of his Anceſtor, and herewith agreeth Britton and the Regiſter. Secondly, the taking of a husband in the caſe aforeſaid being her own act, cannot bar the heir of his lawful action once veſted in him. Thirdly, the law doth not give the heir apparant any writ, for it is not certain whether he ſhall be heir, ſolus deus facit hæredes. Fourthly, the inconvenience were too great if heirs apparant in the life of their Anceſtor ſhould have ſuch a writ to examine and try a mans lawful wife in ſuch ſort as the writ de ventre inſpiciendo doth appoint, and if ſhe ſhould be found to be with child, or ſuſpect, then ſhe muſt be removed to a caſtle, and there ſafely kept until her delivery, and ſo any mans wife might be taken from him againſt the laws of God and man.

a) Bract. lib. 2. fol. 85. Heref. p. 8. E. 1. Ro. 80. de Banco. Mirror cap. 2. Sect. 18. Britton 151. b.

(b) Regiſtr. fo. 227. Bracton lib. 2. fo. 69. Britton fo. 165. Fleta lib. 1. ca. 14.

Britton fo. 165. b. Regiſt. ubi ſupra.

Vid. Bracton, Britton & Fleta ubi ſupra. Regiſtr. ubi ſupra. Bracton and Fleta ubi ſupra hanc (ad exhæredationem.)

The words of the writ de ventre inſpiciendo make this evident, Rex vic: ſalutem, monſtravit nobis A. quod cum R. *quæ fuit uxor Clementis* B. prægnans non ſit, ipſa falsò dicit ſe eſſe prægnantem de eodem Clemente, *ad exhæredationem* ipſius A. deſicut terra quæ fuit ejuſdem C. *ad ipſum A. jure hæreditario deſcendere debeat* tanquam *ad fratrem & hæredem* ipſius C. ſi prædict. R. prolem de eo non habuerit, &c. But this rather belongs to the Treatiſe of original writs, and therefore thus much herein ſhall ſuffice.

And it is to be obſerved that every word of Littleton is worthy of obſervation, firſt (Heirs) in the Plural number, for if a man give land to a man and to his heir in the ſingular number, he hath but an Eſtate for life, for his heir cannot take a fee ſimple by deſcent, becauſe he is but one and therefore in that caſe his heir ſhall take nothing. Alſo obſervable is this conjunctive (Et.) For if a man give lands to one, To have and to hold to him or his heirs, he hath but an Eſtate for life for the uncertainty. (Ses, ſuis) If a man give land unto two, To have and to hold to them two & hæredibus (c) omitting ſuis, they have but an Eſtate for life for the uncertainty, whereof more hereafter in this Section. But it is ſaid, if land be given to one man, & hæredibus, omitting ſuis, that notwithſtanding a fee ſimple paſſeth, but it is ſafe to followd Littleton.

(c) 10. H. 6. 7. 22. H. 6. 15. Pl. Com. 28. b 22. E. 4. 16. 2. H. 4. 13. 20. E. 3. brc. 377

(d) Lib. 5 fo. 96. 97. Brit. fo. 28. H. 8. Dyer. Pl. Com. 287. 288.

(e) Bract. lib. 2. ca. 39. fo. 92. b. Br. ca. 39. fo. 99. b. Fleta lib. 6. ca. 1. 2. & lib. 2. cap. 2. 20. H. 6. 35. 36. 19. H. 6. 27. 22. 74. 22. E. 4. 16. b. 4. E. 6. Pl. Com. 26.

(f) Vid. Sect. 413.

(g) 7. E. 3. 25, Vid. Sect. 686. 25. E. 3. 35. Bract. lib. 2. fo. 62. b. Vid. Sect. 413.

(h) Pl. Com. 242. Seignior Berkleys caſe.

(f) Vid. Brit. fo. 86. 121. & 130. 17. E. 3. 25. b. 33. H. 6. 22. 10. H. 7. 13. 14 9. H. 7. 11, 16. H. 7. 9. 15. E. 4. 13. 14. H. 6. 12, 35. H. 6. 54. 24. Aſſ. 14. 40. Aſſ. 21. Tr. 5. E. 3. Rot 4. in Scaccario. 3. E. 3. 32. 7. E. 3. 40 11. H. 4. 84. 12. H. 4. 12. 18. E. 3. Conuſans 39. b. 5. E. 4. 121. 28. E. 3 4. Lib. 9. fo. 28. in Caſe de Abb. de Strata Marcella.

¶ (d) *Et ſes aſſignes.* Aſſignee cometh of the Verb aſſigno. And unto there be Aſſignes in Deed, and Aſſignes in Law, whereof ſee more in the chapter of warranty, Sect. 733.

¶ *Ceux parolx (ſes heires) tant ſolement font leſtate denheritance en touts feoffments & grants.* (e) Si autem facta eſſet donatio, ut ſi dicam, do tibi talem terram, iſta donatio non extenditur ad hæredes ſed ad vitam donatoris, &c. (f) Here Littleton treateth of Purchaſes by natural perſons, and not of bodies politique or corporate: (g) for if Lands be given to a ſole body politique or corporate, (as to a Biſhop, Parſon, Vicar, Maſter of an Hoſpital, &c.) there to give him an Eſtate of Inheritance in his politique or corporate capacity, he muſt have theſe words, To have and to hold to him and his Succeſſors, for without theſe words Succeſſors, in thoſe caſes there paſſeth no Inheritance, for as the heir doth inherit to the Anceſtor, ſo the ſucceſſor doth ſucceed to the Predeceſſor, and the Executor to the Teſtator. (h) But it appeareth here by Littleton that if a man at this day give lands to I. S. and his ſucceſſors, this createth no fee ſimple in him, for Littleton ſpeaking of natural perſons ſaith that theſe words (*his* heirs) make an Eſtate of Inheritance in all Feoffments and Grants, whereby he excludeth theſe words (his ſucceſſors.) (i) And yet if it be an Ancient Grant it muſt be expounds as the Law was taken at the time of the Grant. (k) A Chantry Prieſt incorporate took a Leaſe to him

him and his ſucceſſors for a hundred years, and after took a Releaſe from the Leaſor to him and his ſucceſſors, and it was adjudged that by the Releaſe he had but an Eſtate for life, for he had the leaſe in his natural capacity for it could not go in ſucceſſion, and (his ſucceſſors) gave him no Eſtate of Inheritance for want of theſe words (his heirs) (l) If the King by his Letters Patents giveth lands Decano & Capitulo, habendum ſibi & hæredibus & ſucceſſoribus ſuis: In this caſe albeit they be perſons in their natural capacity to them and their heirs, yet becauſe the Grant is made to them in their politique capacity, it ſhall enure to them and their ſucceſſors. And ſo if the King do grant lands to I. S. Habendum ſibi & ſucceſſoribus ſine hæredibus ſuis, this Grant ſhall enure to him and his heirs.

(k) Hil.21. Eliz. Dyers manuſcript, Inter Anſley & Johnſon in com.banco.

(l) 18.H.6.11.b.&c. adjudge.

(m) B. having divers ſons and daughters, A. giveth lands to B. & Liberis ſuis, & a lour heires, the father and all his children do take a fee ſimple joyntly by force of theſe words (their heirs) but if he had no child at the time of the feoffment, the child born afterward ſhall not take.

(m) 15.E.3.tit.Counterplea de Voucher.43. 37.H.6.30. 11.E.4.2.

Theſe words (his heirs) do not only extend to his immediate heirs, but to his heirs remote and moſt remote, born and to be born, (n) Sub quibus vocabulis (hæredibus ſuis) omnes hæredes propinqui comprehenduntur, & remoti, nati & naſcituri. And hæredum appellatione veniunt hæredes hæredum in infinitum. And the reaſon wherefore the law is ſo preciſe to preſcribe certain words to create an Eſtate of Inheritance, is for avoyding of uncertainty, the mother of contention and confuſion.

(n) Fleta lib.3.cap.8. Pl. Com. 163.

There be many words ſo appropriated, as that they cannot be legally expreſſed by any other word, or by any periphraſis, or circumlocution: Some to Eſtates of lands, &c. as here and in (a) other places of our Author. In this place theſe words, tantſolement, not ſolement alone, but tantſolement all only, i.e, ſolummodo, or duntaxat, are to be obſerved; (b) Some to tenures; (c) Some to perſons; (d) Some to offences; (e) Some to forms of original writs either for recovery of right, or removing, or redreſs of wrong; (f) Some to warranty of land. Theſe have I touched for examples, I leave others to the ſtudious Reader to obſerve, and add, holding this for an undoubted verity, that there is no knowledge, caſe, or point in law, ſeem it of never ſo little account, but will ſtand our ſtudent in ſtead at one time or other, and therefore in reading, nothing to be pretermitted.

(a) Sect.17.67.133. (b) Sect.156.161. (c) Sect. 184. (d) Sect.190.194.746. (e) Sect.9.67.194.204. 234.236.241.405.485. 478.651.655.646.620. 614.637.674.692. (f) Sect. 733.

¶ *Font leſtate.* Status dicitur à ſtando, becauſe it is fixed, and permanent. The Iſle of Man, which is no part of the Kingdom, but a diſtinct Territory of it ſelf, hath been granted by the great Seal to divers ſubjects and their heirs. (g) It was reſolved by the Lord according to the courſe of the common law, for whatſoever ſtate of Inheritance paſs under the great Seal of England, it ſhall be deſcendible according to the Rules, and courſe of the common law of England.

(g) Tr.40.Eli.in le Countee de Derbyes caſe, by the Lord Chancellor, les 2.chief Juſtices, and chief Baron.

¶ *En touts feoffments & grants.* Here he giveth the feoffment the firſt place as the ancient and the moſt neceſſary conveyance, both for that it is ſolemn and publike, and therefore beſt remembred and proved, (g) and alſo for that it cleareth all diſſeiſins, abatements, intruſions, and other wrongful or defeaſible eſtates, where the entry of the Feoffor is lawful, which neither fine, recovery, nor bargain and ſale by Deed inverted and inrolled doth. And here is implied a diviſion of Fee, or Inheritance, viz. (h) into corporeal (as Lands and Tenements which lie in livery) comprehended in this word Feoffment, and may paſs by livery by Deed, or without Deed, which of ſome is called hæreditas corporata, and incorporeal, (which lie in Grant, and cannot paſs by livery, but by Deed, (as Advowſons, Commons, &c. and of ſome is called hæreditas incorporata) and, by the delivery of the Deed, the Freehold, and Inheritance of ſuch Inheritance, as do lie in Grant, doth paſs) comprehended in this word Grant. And the Deed of incorporeal Inheritances doth equal the livery of corporeal. And therefore Littleton ſaith, in all Feoffments and Grants. Hæreditas, alia corporalis, alia incorporalis: Corporalis eſt, quæ tangi poteſt & videri, incorporalis quæ tangi non poteſt, nec videri.

(g) Vide Sect.59.& 66. (h) Mirror c.2.ſect.15.& c.5.ſect.1.Bract.lib.2.fo. 53.366.368.Fleta lib.3. ca.1.2.15.Britt.84.87.2. & fol.63.101.102.141. 142.agreeth herewith. Pl. Com. 171. Hill & Grange.

Mirror cap.5.ſect.1. Britton cap. 34.

Feoffment is derived of the word of Art feodum, quia eſt donatio feodi, for the Ancient writers of the Law called feoffment donatio, of the Verb do or dedi, which is the propereſt word of feoffment. And that word Ephron uſed, * when he enfeoffed Abraham, ſaying, I give thee the field of Machpelah over againſt Mamre, and the cave therein I give thee, and all the trees in the field and the borders round about, all which were made ſure unto Abraham for a poſſeſſion, in the preſence of many witneſſes.

For the Antiquity of Feoffments ſee the ſecond part of the Inſtitutes, Merlebridge ca.4. 8.E.3.24.18H.6.24. 39 H.6.39.

* Geneſis 23.

By a feoffment the corporeal fee is conveyed, and it properly betokeneth a conveyance in fee, as our Author himſelf hereafter ſaith, * in his chapter of Tenant for life. And yet ſometime improperly it is called a feoffment when an eſtate of freehold only doth paſs, Done eſt noſme general plus que neſt feoffment, car done eſt general a touts choſes moebles & nient moebles, feoffment eſt riens forſque del ſoyle. And note there is a difference inter cartam & factum, for carta is

* Vide ſect. 57. Britton cap. 34. 44.E.3.41. See more of feoffments ſect. 60. See of factum, ſect.259.

intended a charter which doth touch inheritance, and so it is not factum unless it hath some other addition.

Lib. 3. f. 63. in Lincoln Colledge case.

Grant, Concessio, is properly of things incorporeal, which (as hath been said) cannot pass without Deed. And here it is to be observed (that I may speak once for all) that every Period of our Author in all his three books contains matter of excellent learning, necessarily to be collected by implication, or consequence, for example he saith here, that these words (his heirs) make an estate of Inheritance in all Feoffments and Grants, he expressing Feoffments and Grants, necessarily implieth, that this Rule extendeth not, first, to Last Wills and Testaments, for thereby, (i) as he himself after saith, an estate of Inheritance may pass without these words (his heirs.) (k) As if a man devise 20. acres to another, and that he shall pay to his Executors for the same ten pound, hereby the Devisee hath a fee simple by the intent of the Devisor, albeit it be not to the value of the land. (l) So it is if a man devise lands to a man imperpetuum, or to give, and to sell, or in feodo simplici, or to him and to his assigns for ever. In these cases a fee simple doth pass by the intent of the Devisor, but if the Devise be to a man and his Assignes without saying (for ever) the Devisee hath but an estate for life. (m) If a man devise Land to one & sanguini suo, that is a Fee simple, but if it be semini suo, it is an estate taile.

(i) Litt. lib. 3. c. de Attor. Sect. 5. 8. 6. 4. E. 6. Estates Br. 78. 29. H. 8. Testaments 18. 22. Eliz. Dier 371. Temps H. 8. tit. Conscience Br. 25.

(k) 21. E. 3. 16. 34. H. 6. 7. 19. H. 8. 9. lib. 3. fol. 21. in Borastons case lib. 6. f. 16 17. lib. 10. fo. 67.

(l) Vide Sect. 585.

(m) Mich. 40. & 41. Eliz. in Error Int. Downhall & Catesby adjudge. Brook tit. taile 21.

(n) Secondly, that it extendeth not to a fine sur connusans de droit come ceo que il ad de son done, by which a fee also may pass without this word (heirs) in respect of the height of that fine, and that thereby is implied that there was a precedent gift in fee.

(n) Lib. 1. f. 100. Shelleys case 42. E. 3. 7. 19. H. 6. 17. b. 22. b. Pl. com. 248.

Thirdly, Nay to certain Releases, and that three manner of wayes, (o) first, when an estate of Inheritance passeth and continueth, as if there be three coparceners or joyntenants, and one of them releast to the other two, or to one of them generally without this word (heirs) by Littletons own opinion they have a fee simple as appeareth hereafter. 2. By release (p) when an estate of Inheritance passeth and continueth not, but is extinguished, as where the Lord releases to the Tenant, or the Grantee of a Rent, &c. release to the Tenant of the land generally all his right, &c. hereby the Seigniory, Rent, &c. are extinguished for ever, without these words (heirs.) 3. (q) When a bare right is released, as when the Disseisee release to the Disseisor all his right, he need not (saith our Author in another place) speak of his heirs. But of all these, and the like cases, more shall be treated in their proper places. 4. Nay to a Recovery, A. seised of land suffereth B. to recover the land against him by a common recovery where the Judgment is quod prædictus B. recuperet versus præd'. A. tenementa prædicta cum pertin, yet B. recovereth a fee simple without these words (heirs) for regularly every Recoveror recovereth a fee simple. 5. Nay to a creation of Nobility by Writ, for when a man is called to the upper house of Parliament by writ, he is a Baron and hath Inheritance therein without the word (heirs) yet may the King limit the general state of Inheritance created by the law and custome of the Realm to the heirs males, or general of his body by the writ, as he did to Bromflere who in 27. H. 6. was called to Parliament by the name of the Lord Vescye, &c. with the limitation in the writ to him and the heirs males of his body, but if he be created by patent, he must of necessity have these words (his heirs) or the heirs males of his body, or the heirs of his body, &c. otherwise he hath no Inheritance. The first creation of a Baron by patent that I find was of John Beauchampe of Holt created Baron by patent in 11. R. 2. for Barons before that time were called by writ: And it is to be observed that of ancient times Earles, &c. were created by girding them with a sword, and nominating him Earl, &c. of such a County or place, and this with a calling of him to Parliament by writ, by that name was a sufficient creation of Inheritance.

(o) Litt. lib. 2. c. tenant. in common Sect. 304. 305. cap. Attorn. Sect. 374. Dyer 9. Eliz. 263.

(p) Litt. lib. 3. c. Releases. Sect. 479. 480. 20. H. 6. 17. 19. H. 6. 17. 22.

(q) Litt. cap. Release. Sect. 467.

27. H. 6. Lo. Vescies case.

But out of this Rule of our Author the law doth make divers exceptions (Et exceptio probat regulam) for sometime by a feoffment a fee simple shall pass without these words (his heirs.) For example, first, (r) if the father infeoffee the son; To have and to hold to him and to his heirs, and the son infeoffeth the father as fully as the father infeoffed him, by this the father hath a fee simple, quia verba relata hoc maximè operantur per referentiam ut in esse videntur. (s) Secondly, in respect of the consideration, a fee simple had passed at the common law without this word (heirs) and at this day an estate of Inheritance in taile, as if a man had given land to a man with his Daughter in Frankmarriage generally, a Fee simple had passed without this word (heirs) for there is no consideration so much respected in Law, as the consideration of Marriage, in respect of Aliance and Posterity. (t) Thirdly, if a Feoffment or Grant be made by Deed to a Mayor and communalty or any other Corporation aggregate of many persons capable, they have a fee simple without the word (successors) because in Judgment of the law they never dy. (u) Fourthly, in case of a sole corporation a Fee simple shall sometime pass without this word (successors) as if a feoffment in fee be made of land to a Bishop, To have and to hold to him in libera elemosina, a fee simple doth pass without this word (successors.) (w) And so if a man give lands to the King by Deed inrolled; a Fee simple doth pass without these words (successors or heirs) because in judgment of Law the King never dieth. Fifthly, in Grants sometimes an Inheritance shall pass without this word (heirs)

(r) 39. Ass. 12. 41. E. 3. tit. Feoffments & faits 254. 14. H. 4. 13. 34. E. 3. Avowry 258.

(s) Vide Sect. 17. 12. H. 4. 19. in Formdon.

(t) 8. E. 3. 27. 11. H. 7. 12. 22. E. 4. 11. H. 4. 84. 2. H. 4. 13.

(u) 19. H. 6. 74. 20. H. 6. 36.

(w) Pl. Com. Lo. Berkleyes case.

(heirs) (x) as if partition be made between coparceners of lands in fee simple and for olwelty of partition the one grant a Rent to the other generally, the Grantee shall have a fee simple without this word (heirs) because the Grantor hath a fee simple in consideration whereof he granted the Rent, ipsæ etenim leges cupiunt ut jure regantur. Sixthly, by the Forest law, if an assart be granted by the King at a Justice seat (which may be done without charter) to another Habendum & tenendum sibi imperpetuum, he hath a fee simple without this word (heirs) (y) for there is a special law of the Forest, as there is a law Martial for wars, and a Marine Law for the seas. (z) And this Rule of our Author extendeth to the passing of estates of Inheritances in exchanges, releases, or confirmations that enure by way of enlargement of estates, warranties, bargain and sales by Deed indented and inrolled, and the like in which this word (heirs) is also necessary for they do tant amount to a Feoffment or Grant, or stand upon the same reason that a Feoffment or Grant doth, for like reason doth make like law, ubi eadem ratio, ibi idem jus. And this is to be observed throughout all these three books, that where other cases fall within the same reason, our Author doth put his case but for example, or so our Author himself in another place * explaineth it, saying, Et memorandum que en touts autres cases coment que ne sont icy expressment moves & specifies si sont en semblable ley. And here our Author is to be understood to speak of heirs when they are inherited by dissent, for they are capable of land also by purchase, and then the course of descent is sometime altered, as if lands of the nature of Gavelkind be given to B. and his heirs having issue divers sons, all his sons after his decease shall inherit, but if a lease for life be made, the remainder to the right heirs of B. and B. dieth, his eldest son only shall inherit, for he only to take by purchase is right heir by the common law. So note a diversity between a purchase and a descent, but where the remainder is limited to the right heirs of B. it need not to be said, and to their heirs, for being plurally limited it includeth a fee simple, and yet it resteth but in one by purchase.

(x) 29.Ass.25.15.H.7.14. 2.H.7.5.11.H.4.3. 21.E.3.1.21.Ass.

(y) 40.H.7.7.

(z) 22.E.3.3.45.E.3.20. 9.E.2.21. Li.4.f.121.Bustards case Vide sect.465.469.610. 19.H.6.17.22. 19.E.2.garr.85.

* Sect. 301.

Out of that which hath been said it is to be observed, that a man may purchase lands to him and his heirs by ten manner of conveyances, (for I speak not here of estoppels.) First, by Feoffment. Secondly, by Grant (of which two our Author here speaketh.) Thirdly, by Fine, which is a Feoffment of Record. Fourthly, by common Recovery, which is a common conveyance, and is in nature of a Feoffment of Record. Fifthly, by Exchange, which is in nature of a Grant. Sixthly, by Release to a particular Tenant. Seventhly, by confirmation to a particular Tenant, both which are in nature of Grants. Eighthly, by Grant of a Reversion or Remainder with Attornment of the particular Tenant, of all which our Author speaketh hereafter. Ninthly, by bargain and sale by Deed indented and inrolled ordained by Statute since Littleton wrote. Tenthly, by devise by custome of some particular place, as he shewed hereafter, and since he wrote, by will in writing, generally by Authority of Parliament.

27.H.8.ca.16. 32.H.8.ca.2. 34.H.8.ca.5.

What words are apt words for a Feoffment or Grant, vide Sect. 591. Our Author speaketh of Feoffments and Grants, whereby is implyed lawful conveyances, and therefore this Rule extendeth not to disseisins, abatements or intrusions into lands or tenements, or to usurpations to advowsons, &c. in which cases, estates in fee simple are gained by the act and wrong of the Disseisors, Abators, Intruders and Usurpers, and if a disseisin, abatement, or intrusion be made to the use of another, if cey que use agreeth thereunto in pays, by this bare agreement he gaineth a fee simple without any livery of seisin or other ceremony.

Sect. 531. 37.Ass.p.8.38.Ass.p.8. 12.E.4.9.&c.

Sect. 2.

ET si home purchase terres en fee simple & deby sans issue cheseun, q̄ est son prochein cosin collateral del entire sanke, de quel pluis long degree q̄ il soit, port inheriter & aver un la tre come heire a luy.

AND if a man purchase Land in fee simple and die without issue, he which is his next cosen collateral of the whole blood, how far so ever he be from him in degree, may inherit and have the land as heir to him.

LIttleton the weth here who shall be heir to lands in fee simple, for he intendeth not this case of an estate taile, for that he speaketh of an heir of the whole blood, for that extendeth not to estates in taile, as shall be said here after in this chapter, Section.

¶ *Prochein cosin collateral.* Neither extendeth he brethren or sisters, because he hath a special case

concerning them in this chapter, sect. 5. and in his chapter of parceners, but this is intended

where a man purchaſeth lands and dieth without iſſue, and having neither brother nor ſiſter, then his next couſin collateral ſhall inherite. So as here is implied a diviſion of heirs, viz. lineal (who ever ſhall inherite) and collateral, (who are to inherite for default of lineal). For in deſcents it is a maxime in Law, quod linea recta ſemper præfertur tranſverſali. Lineal deſcent is conveyed downward in a right line, as from the Grandfather to the Father, from the father to the ſon, &c. Collateral deſcent is derived from the ſide of the lineal, as Grandfathers brother, fathers brother, &c. Prochein couſin collateral inheritera doth give a certain direction to the next couſin to the ſon, and therefore the fathers brother and his poſterity ſhall inherite before the Grandfathers brother and his poſterity. Et ſic de cæteris, for propinquior excludit propinquum, & propinquus remotum, & remotus remotiorem.

Glanvill.lib.7.ca.3.4. Bract.lib.2.c.30.fo.65. Britton cap.119. Fleta lib. 6.cap.1.& 2.

Upon this word (prochein) I put this caſe. One hath iſſue two ſons A. and B. and dieth. B. hath two ſons C. and D. and dieth. C. the eldeſt ſon hath iſſue and dieth: A. purchaſeth lands in fee ſimple and dieth without iſſue, D. is the next couſin, and yet ſhall not inherite, but the iſſue of C. for he that is inheritable is accounted in law next of blood. And therefore here is underſtood a diviſion of next, viz. next, jure repræſentationis, and next, jure propinquitatis, that is, by right of repreſentation and by right of propinquity. And Littleton meaneth of the right of repreſentation, for legally in courſe of deſcents he is next of blood inheritable. And the iſſue of C. doth repreſent the perſon of C. and if C. had lived he had been legally next of blood. And whenſoever the father if he had lived ſhould have inherited, his lineal heir by right of repreſentation ſhall inherite before any other, though another be jure propinquitatis, nearer of blood. And therefore Littleton intendeth his caſe of next couſin of blood immediately inheritable. So as this proveth another diviſion of next blood, viz. immediately inheritable, as the iſſue of C. and mediately inheritable as D. if the iſſue of C. dy without iſſue, for the iſſue of C. and all that line be they never ſo remote ſhall inherite before D. or his line, and therefore Littleton ſaith well, de quel pluis long degree que il ſoit. And here ariſeth a diverſity in Law between next of blood inheritable by deſcent, and next of blood capable by purchaſe. And therefore in the caſe before mentioned, if a leaſe for life were made to A. the remainder to his next of blood in fee. In this caſe as hath been ſaid D. ſhall take the remainder, because he is next of blood and capable by purchaſe, though he be not legally next to take as heir by deſcent.

19.R.2.tit.gar.100.

30.Aſſ.p.47.

Sect. 3.

¶ *Uncore le pier eſt pluis prochein de ſanke.* And therefore ſome do hold upon theſe words of Littleton, that if a leaſe for life were made to the ſon the remainder to his next of blood, that the father ſhould take the remainder by purchaſe, and not the uncle, for that Littleton ſaith the father is next of blood, and yet the uncle is heir. As if a man hath iſſue two ſons, and the eldeſt ſon hath iſſue a ſon and dy, a remainder is limited to the next of his blood, the younger ſon ſhall take it, yet the other is his heir.

5.E.6.tit.Adamſon.Br. 47.Ratcliffs caſe ubi ſup. See after in the chapter of ſocage.

¶ (p) *Eſt un Maxime en la Ley que enheritance poet linealment diſcender mes nemy aſcender.*

(p) Pl. Com. 293. b. Osbornes caſe.

Maxime, i. e. A ſure foundation or ground of act, and a

¶ MEs ſi ſoit pier & fits, & le pier ad un frere que eſt uncle a le fits, & le fits purchaſe tre en fee ſimpr & mor ſans iſſue vivant ſon pier, uncle avera la terre come heir al fits & nemy le pier, uncore le pier eſt pluis prochein de ſanke; pur ceo que eſt un maxime en le ley, Que enheritace poet linealment diſcender, mes nemy aſcender. Uncor ſi le fits en tiel caſe mor ſans iſſue, & ſon uncle entra en la tre come heire a le

BUt if there be father & ſon, & the father hath a brother that is uncle to the ſon and the ſon purchaſe land in fee ſimple, and dy without iſſue, living his father, the uncle ſhall have the land as heir to the ſon, and not the father, yet the father is nearer of blood; becauſe it is a maxime in Law, That inheritance may lineally deſcend, but not aſcend. Yet if the ſon in this caſe dy without iſſue, and his uncle enter into the Land as heir to the

fits,

fits (ſicome il deboit ꝑ la ley) & apres luncle debia ſans iſſue, vivant le pier donqs le pier, avera la terre come heire al uncle, & nemy cõe heire a ſon fits, pur ceo que il veigne al terre ꝑ collateral diſcent & nemy ꝑ lineal aſcention.

ſon (as by law he ought) and after the uncle dieth without iſſue, living the father, the father ſhall have the land as heir to the uncle, & not as heir to his ſon, for that he commeth to the land by collateral diſcent & not by lineal aſcent.

concluſion of reaſon, ſo called (q) quia maxima eſt ejus dignitas & certiſſima authoritas, atque quod maximè omnibus probetur, ſo ſure and uncontrollable, as that they ought not to be queſtioned. (r) And that which our Author here and in other places calleth a Maxime, hereafter he calleth a Principle, and it is all one with a Rule, a common ground, Poſtulatum or an Axiome, and it were too much curioſity to make nice diſtinctions between them. And

(q) Pl. Com. 27. b.

(r) Sect. 90. 648.

it is well ſaid in our books, (ſ) neſt my a diſputer lancient principles del ley. I never read any opinion in any book old or new againſt this Maxime, but only in lib. rub. where it is ſaid, (t) ſi quis ſine liberis diſceſſerit pater aut mater ejus in hæreditatem ſuccedat, vel frater & ſoror ſi pater & mater deſint, ſi nec hos habeat, ſoror patris vel matris & deinceps qui propinquiores in parentela fuerint hæreditario ſuccedant, & dum virilis ſexus extiterit, & hæreditas abinde ſit, femina non hæreditat'. But all our ancient Authors and the conſtant opinion ever ſince do affirm the maxime.

(ſ) 12. H. 4. Glan vill lib. 7. cap. 1. Bract. lib. 2. cap. 29.

(t) Lib. Rub. cap. 70.

By this maxime in the concluſion of his caſe, only lineal aſcention in the right line is prohibited, and not in the collateral, (u) Quælibet hæreditas naturaliter quidem ad hæredes hæreditabiliter deſcendet, nunquam quidem naturaliter aſcendit, deſcendit itaque jus quaſi ponderoſum quod cadens deorſum recta linea vel tranſverſali, & nunquam reaſcendit ea via qua deſcendit poſt mortem anteceſſorum, à latere tamen aſcendit alicui propter defectum hæredum inferius provenientium; ſo as the lineal aſcent is prohibited by law, and not the collateral. And in prohibiting the lineal aſcent, the common law is aſſiſted with the law of the 12. Tables.

(u) Britt. ca. 119. Fleta lib. 6. ca. 1. Num. ca. 27. Ratcliffs caſe ubi ſupra.

Here our Author for the confirmation of his opinion draweth a reaſon and a proof (as you have perceived) from one of the maximes of the common law: Now that I may here obſerve it once for all, his proofs and arguments, in theſe his three books, may be generally divided into two parts, viz. from the common law and from ſtatutes, of both which, and of their ſeveral branches I ſhall give the ſtudious Reader ſome few examples, and leave the reſt to his diligent obſervation.

For the common law his proofs and argument are drawn from 20. ſeveral fountains or places,

(a) Firſt, from the Maximes, Principles, Rules, Intendment and Reaſon of the common law, which indeed is the Rule of the Law as here, and in other places our Author doth uſe.

(b) Secondly, from the books, Records, and other Authorities of law cited by him, Ab authoritate, & pronunciatis.

(c) Thirdly, from original Writs in the Regiſter, à reſcriptis valet argumentum.

(d) Fourthly, from the form of good pleading.

(e) Fifthly, from the right entry of Judgements.

(f) Sixthly, à præcedentibus approbatis & uſu, from approved Precedents and Uſe.

(g) Seventhly, à non uſu, from not uſe.

(h) Eighthly, ab artificialibus argumentis, conſequentibus & concluſionibus, artificial arguments, conſequents and concluſions.

Ninthly, (i) à communi opinione juriſprudentum, from the common opinion of the Sages of the Law.

Tenthly, (k) ab ineonvenienti, from that which is inconvenient.

Eleventhly, (l) à diviſione from a diviſion, vel ab enumeratione partium from the enumeration of the parts.

Twelfthly, (m) à majore ad minus, from the greater to the leſſer, or (n) from the leſſer to the greater, (o) à ſimili, (p) à pari.

13. (q) Ab impoſſibili, from that which is impoſſible.

14. (*) A fine, from the end.

15. (r) Ab utili vel inutili from that which is profitable or unprofitable.

16. (ſ) Ex abſurdo, for that thereupon ſhall follow an abſurdity, quaſi à ſurdo prolatum, de, cauſe it is repugnant to underſtanding and reaſon.

17. (t) A natura & ordine naturæ, from nature or the courſe of nature.

(a) Sect. 5. 8. 90. 98. 52. 53. 57. 59. 65. 99. 130. 146. 156. 169. 178. 231. 293. 302. 352. 360. 376. 377. 396. 410. 440. 441. 346. 347. 462. 431.

(b) Sect. 20. where a number other are quoted

(c) Sect. 67. 132. 170. 234. 241. 263. 613. 614.

(d) Sect. 58. 170. 183. 369

(e) Sect. 248. 249.

(f) Sect. 88. 74. 76. 145. 332. 371. 372. 445.

(g) 108. 733.

(h) Sect. 170. 264. 282. 308 429. 464. 629. 633. 686. 340. 418. 613. 686. 739.

(i) Sect. 697. 59. 104. 288. 332. 478.

(k) Sect. 87. where many others are quoted.

(l) Sect. 13. where many more are quoted, but ſee chiefly, ſect. 381.

(m) Sect. 418. 439. 441.

(n) Sect. 18 (o) 301. &c.

(p) 291. 298. 409. &c.

(p) 129. 440.

(q) Sect. 46. 194.

(*) Sect. 360.

(r) Sect. 722.

(ſ) Sect. 114. 223. 129, 211. 107. 108.

18. (t) Ab ordine Religionis, from the order of Religion.

19. (u) A communi præſumptione, from a common preſumption.

20. (w) A lectionibus juriſprudentium, from the Readings of learned men of law.

From ſtatutes his arguments and proofs are drawn.

1. (x) From the rehearſal or preamble of the ſtatute.

2. Be the body of the Law diverſly interpreted.

Sometime by other parts of the ſame ſtatute, which is benedicta expoſitio, & ex viſceribus cauſæ.

(y) Sometime by the reaſon of the common law. But ever the general words are to be intended of a lawful Act, (z) and ſuch Interpretation muſt ever be made of all ſtatutes, that the innocent or he in whom there is no default may not be damnified.

¶ *En la ley.* There be divers Laws within the Realm of England. As firſt (a) Lex Coronæ, the law of the Crown.

2. (b) Lex & conſuetudo Parliamenti. Iſta lex eſt ab omnibus quærenda, à multis ignorata, à paucis cognita.

3. (c) Lex naturæ, the law of Nature.

4. (d) Communis lex Angliæ, the common law of England, ſometimes called Lex terræ, intended by our Author in this and the like places.

5. (e) Statute law. Laws eſtabliſhed by Authority of Parliament.

6. (f) Conſuetudines. Cuſtoms reaſonable.

7. (g) Jus belli. The law of Arms, war, and chivalry, in republica maximè conſervanda ſunt jura belli.

8. (h) Eccleſiaſtical or Canon Law in courts in certain caſes.

9. (i) Civil Law in certain caſes not only in courts Eccleſiaſtical, but in the courts of the conſtable and Marſhal, and of the Admiralty, in which court of the Admiralty is obſerved, la ley Glyron, anno 5. of Richard the firſt, ſo called, becauſe it was publiſhed in the Iſle of Olyron.

10. (k) Lex foreſtæ. Foreſt law.

11. (l) The Law of Marque or reprizal.

12. (m) Lex mercatoria, Merchant, &c.

13. (n) The Laws and cuſtoms of the Iſles of Jerſey, Gerneſey and Man.

14. (o) The Law and privilege of the Stannaries.

15. (p) The Laws of the Eaſt, Weſt, and middle Marches, which are now abrogated.

But hereof this little taſte for our ſtudent, that he may be capable of that which he ſhall read concerning theſe and others in Records, and in our books, and orderly obſerve them, ſhall ſuffice.

¶ *Et ſon uncle enter en la terre.* For if the uncle in this caſe doth not enter into the land, then cannot the Father inherit the land, for there is another maxime in law herein implied. (q) That a man that claimeth as heir in fee ſimple to any man by deſcent muſt make himſelf heir to him that was laſt ſeiſed of the actual Freehold and Inheritance. And if the Uncle in this caſe doth not enter, then had he but a freehold in law, and no actual freehold, but the laſt that was ſeiſed of the actual freehold was the ſon to whom the father cannot make himſelf heir, and therefore Littleton ſaith, Et ſon uncle enter en la terre, (ſicome devoit per la ley) to make the father to inherit, as heir to the uncle. (r) Note that true it is that the uncle in this caſe is heir, but not abſolutely heir, for if after the deſcent to him the father have iſſue a ſon or daughter, that iſſue ſhall enter upon the Uncle. (ſ) And ſo it is if a man have iſſue a ſon and a daughter, the ſon purchaſeth land in fee and dyeth without iſſue, the daughter ſhall inherit the land, but if the father hath afterward iſſue a ſon, this ſon ſhall enter into the land as heir to his brother, and if he hath iſſue a daughter and no ſon, ſhe ſhall be coparcener with her ſiſter.

¶ *Si come il devoit per la ley.* Theſe words as a key do open the ſecrets of the law, for hereupon it is concluded, that where the uncle cannot get an actual poſſeſſion by entry or otherwiſe, there the father in this caſe cannot inherit. And therefore if an Advowſon be granted to the ſon and his heirs, and the ſon dy without iſſue, and this deſcend to the uncle, and he dy before he doth or can preſent to the church, the father ſhall not inherit, becauſe he ſhould make himſelf heir to the ſon, which he cannot do. And ſo of a Rent and the like. But if the uncle had preſented to the church, or had ſeiſin of the Rent, there the father ſhould have inherited. For Littleton putteth his caſe of an entry into land but for an example, If the ſon make a leaſe for life, and dy without iſſue, and the Reverſion deſcend to the uncle, and he dy, the Reverſion ſhall not deſcend to the father, becauſe in that caſe he muſt make himſelf heir to the ſon. A. infeoffe the ſon with warranty to him and his heirs, the ſon dies, the uncle enters into the land and dies, the father if he be impleaded ſhall not take advantage of this warranty

(t) Sect. 202.
(u) Sect. 440.
(w) Sect. 481.
(x) Sect. 15. &c. Sect. 731. 692. 635. 633. 441. 103. 193. 154. 140. 21.
(y) Sect. 464.
(z) Sect. 731. 685.
(a) 17. E. 3. Rot. parl. nu. 19 25. E. 3. cap. 1. Regiſt. inter Jura regia 61. &c.
(b) Commonly ſpoken of in Parliament Rols.
(c) 13. E. 4. 9. Lib. 7. Calvins caſe. Pl. com. Sharingtons caſe.
(d) This Law appeareth in our books and judicial Records.
(e) Theſe are of record in Rolls of Parliament.
(f) Whereof you ſhall read in our Author, and in our books.
(g) Rot. Parl. 2. R. 2. nu. 3 13. R. 2. ca. 2.
(h) Lib. 7. Caudries caſe articul. ſuper cartas. &c.
(i) 37. H. 6. 21. Forteſc. ca. 52. 13. H. 4. 4. 28. H. 8. ca. 15.
(k) Carta de Foreſta &c. the eires of the Forreſts.
(l) 27. E. 3. ca. 17. Wi. ca. 23. 4. H. 5. cap. 7.
(m) Mirror des Juſtic. c. 1 Bract. 334. 444. Fleta lib. 2. ca. 51. 52. &c. 5. E. 3. 11. 38. E. 3. 7. 27. E. 3. ca. 8. Forteſc. 32. E. N. B. 117. 13. E. 4. 9. Rot. Parl. 6. H. 4. nu. 43. 10. H. 7. 16. 47. E. 3. 22. 30. B. 1. Account. 127. Carta mercatoria 31. E. 1. rot. patent.
(n) Mich. 41. E. 3. coram rege Theſaur. 12. E. 3. 5. b. H. 8. fol. 5. Rot. pat. an. 20. E. 1. lib. 7. Calvins caſe fol. 21. Regiſt. fol. 22.
(o) 50. E. 3. Rot. Parl. 50. E. 3. Rot. patent. &c.
(p) 31. H. 6. ca. 3. 4. Ja. c. 1.
(q) 11. H. 4. 11. 10. Aſſ. 27. 34. Aſſ. p. 20. 19. E. 2. quar. imped. 177. 45. E. 3. 13. 40. Aſſ. p. 6. Doct. & Stud. 12. b. 32. H. 6. 35.
(r) 19. H. 6. 61.

ranty, for then he must vouch A. as heir to his son, which he cannot do, for albeit the warranty descended to the uncle, yet the uncle reaverty it as he found it, and then the father by (devoit) cannot take advantage of it. For Littleton Sect. 603. saith that warranties shall descend to him that is heir by the Common Law, and Sect. 718. he saith that every warranty which descends, doth descend to him that is heir to him which made the warranty by the common law, which properly that the father shall not be bound by the warranty made by the son, for that the father cannot be heir to the son, that made the warranty. And a warranty shall not go with tenements, wherewith it is annexed, to any especial heir but always to the heir at the common law. And therefore if the Uncle be seised of certain lands, and is disseised, the son releases to the disseisor with warranty, and dy without issue, this shall bind the uncle, but if the uncle dy without issue, the father may enter, for the warranty cannot descend upon him. So if the son conclude himself by pleading concerning the tenure and services of certain lands, this shall bind the uncle, but if the uncle dy without issue, this shall not bind the father, because he cannot be heir to the son, and consequently not to the estoppel in that case: but if it be such an estoppel as runneth with the land, then it is otherwise.

Vid. Sect. 603. 718.

Vid. Sect. 735. 736. 737.

35. H. 6. 33. John Crooks case.

Sect. 4.

Vid. Sect. 354. an excellent point.

ET en tiel case, lou le fits purchase tevre en fee simple, & debie saunz issue, ceux de son sanke de part son pier enheriteront cõe heires a luy, devant aicun de sanke de pt la mere: mes sil nad aicun heire de part son pier, donques la tre discendera a les heires de part la mere. Mes si home prent enheritrix des tres en fee simple, qux ont issue fits, & deviont, et le fits enter en les tenements, come fits & heire a la mere, & puis debie sans issue, les heires de part la mere doyent enheriter les tenements & jammes les heires de part le pier. Et sil ny ad aicun heire de part la mere, donque le seignior, de que la terre est tenus, avera la

AND in case, where the son purchaseth Land in Fee simple, and dies without issue, they of his blood on the fathers side shall inherit as heirs to him, before any of the blood on the mothers side. But if he hath no heir on the part of the father, then the land shall descend to the heirs on the part of the mother. But if a man marrieth an inheritrix of lands in fee simple, who have issue a son, and die, and the son enter into the tenements, as son and heir to his mother, and after dies without issue, the heirs of the part of his mother ought to inherit, and not the heirs of the part of the father. And if he hath no heir on the part of the mother, then the Lord

BY this it appeareth, that our Author divideth heirs into heirs of the part of the father, and into heirs of the part of the mother. (a) And note, it is an old and true Maxime in law, that none shall inherit any lands as heir, but only the blood of the first purchaser, for * refert à quo fiat perquisitum. As for example, Robert Coke taketh the daughter of Knightley to wife and purchaseth lands to him and to his heirs, and by Knightley hath issue Edward, none of the blood of the Knightleys though they be of the blood of Edward shall inherit, albeit he had no kindred but them, because they were not of the blood of the first purchaser, viz. of Robert Coke.

(a) Pl. com. Sir Edward Cleres case. 447.

(*) Fleta lib. 6. ca. 1. 2. & c Bracton lib. 2. fol. 65. 67. 68. 69. &c. Britton ca. 119 24. E. 3. 50. 39. E. 3. 29. 30. 38. 49. E. 3. 12. 49. Ass. p. 4. 12. E. 4. 14. Pl. com. 445. & 450. 7. E. 6. Dyer 6. 24. E. 3. 24. 37. Ass. 4. 40. E. 3. 9. 42. E. 3. 10. 45. E. 3. Releases 28. 7. H. 5. 3. 4. 8. Ass. 6. 35. Ass. 2. 5. E. 4. 7. 3. H. 5. 2 1. H. 7. 33. 40. Ass. 6. Ratcliffs case lib. 3. f. l. 42

(b) *Ceux del sank de part son pier* Here it is to be understood, that the father hath two immediate bloods in him, viz. the blood of his father, and the blood of his mother, both these bloods are of the part of the father. (c) And this made ancient Authors say, that if a man be seised of lands in the right of his wife, and is attainted of felony, and after hath issue, this issue should not inherit his mother, for that he could derive no blood inheritable from the father. And both these bloods of the part of the Father must be spent before

(b) Bracton. ubi supra. Fleta. ubi supra. Britton. ca. 118. 119. Pl. com. 445. Cleres case. Tr. 19. E. 1. in Banco Rot. 25. Lincoln. Will. Scels case.

(c) Britton fol. 15. Fleta lib. 1. ca. 18. Pl. com. 445. 446. &c. Cleres case.

before the heir of the blood of the part of the mother shall inherit, wherein ever the line of the male of part of the father, (that is) the posterity of such male, be they male or female, (who ever in descents are preferred) must fail before the line of the mother shall inherit, (d) and the reason of all this is for that the blood of the part of the father is more worthy, and more near in judgment of law, than the blood of the part of the mother.

(d) 19.R.2.garr.100.

Britton ca.118.119. Fleta lib.6.ca.2.

¶ *Devant ascun del sanke del part del mere.* And it is to be observed, that the mother hath also two immediate bloods in her, (viz.) her fathers blood, and her mothers blood. Now to illustrate all this by example. Robert Fairfield son of John Fairfield, and Jane Sandy, take to wife Anne Boyes Daughter of John Boyes and Jane Bewpree, and hath issue William Fairfield. who purchaseth lands in fee. Here William Fairfield hath four immediate bloods in him, two of the part of his father, viz. the blood of the Fairfields, and the blood of the Sandyes, and two of the part of his mother, viz. the blood of the Boyses, and the blood of the Bewprees, and so in both cases upward in infinitum. Now admit that William Fairfield by without issue, first the blood of the part of his father, viz. of the Fairfields, and for want thereof the blood of the Sandies (for both these are of the part of the father) if both these fail, then the heirs of the part of the mother of William Fairfield shall inherit, viz. first the blood of the Boyses, and for default thereof the blood of the Bewprees.

terre per Escheat. En meisme le manner est, si tenents discendont a le fits de part le pier, & il enter & puis morust sans issue, cel terre discenda as heires de part le pier, & nemy as heires de part la mere. Et sil ny ad ascun heire de part le pier, donques le seignior, de que la terre est tenus, avera la terre per Escheat. Et sic vide diversitatem, lou le fits purchase terres ou tenements, en fee simple, et lou il detient eins a tiels terres ou tenements per discent de part la mere ou de part son pier.

of whom the land is holden, shall have the land by Escheat. In the same manner it is, if lands descend to the son, of the part of the father, and he entreth, and afterwards dies without issue, this Land shall descend to the heirs on the part of the father, and not to the heirs on the part of the mother. And if there be no heir of the part of the father, the Lord of whom the Land is holden shall have the land by Escheat. And so see the diversity, where the son purchaseth lands or tenements in fee simple, and where he commeth to them by descent on the part of his mother, or on the part of his father.

It is necessary to be known in what cases the heir of the part of the mother shall inherit, and where not. If a man be seized of lands as heir of the part of his mother, and maketh a feoffment in fee, and taketh back an Estate to him and to his heirs, this is a new purchase, and if he dieth without issue, the heirs of the part of the father shall inherit. If a man so seised maketh a feoffment in fee upon condition, and dy, the heir of the part of the father which is the heir at the Common Law shall enter for the condition broken, but the heir of part of the mother shall enter upon him, and enjoy the land. (m) A man so seised maketh a feoffment in fee reserving a Rent to him and to his heirs, this Rent shall go to the heirs of the part of the father; but (n) if he had made a gift in taile, or a lease for life reserving a Rent, the heir of the part of the mother shall have the Reversion, and the Rent also, as incident thereunto, shall pass with it, but the heir of the part of the mother shall not take advantage of a condition annexed to the same, because it is not incident to the Reversion, nor can pass therewith. (o) If a man had been seised of a Mannor as heir on the part of the mother, and before the statute of Quia emptores terrarum, had made a feoffment in fee of parcel to hold of him by Rent and service, albeit they be newly created, yet for that they are parcel of the Mannor, they shall with the rest of the Mannor descend to the heir of the part of the mother, quia multa transeunt cum universitate quæ per se non transeunt. If a man hath a Rent seck of the part of his mother, and the Tenant of the land grant-

9.H.7.24.

(m) 7.H.6.4. Lib.1.fol.100.Shelleyes case.

(n) 5.E.2.tit.avowry 207

(o) 5.E.2.avowry 207.

granteth a diſtreſs to him and his heirs, and the grantee dieth, the diſtreſs ſhall go with the rent to the heir of the part of the mother as incident or appurtenant to the rent, for now is the rent ſeck become a Rentcharge.

(p) A man ſo ſeiſed as heir on the part of his mother maketh a Feoffment in Fee to the uſe of him and his heires, the uſe being a thing in truſt and confidence ſhall inſue the nature of the land, and ſhall deſcend to the heir on the part of the mother. (q) A man hath a ſeignior as heir of the part of his mother, and the tenancy doth eſcheat, it ſhall go to the heir of the part of the mother. If the heir of the part of the mother, of land whereunto a warranty is annexed, is impleaded and Voucht, and judgement is given againſt him, and for him to recover in value, and dieth before execution (r) the heir of the part of the mother ſhall ſue execution to have in value againſt the Voucher, for the effect ought to purſue the cauſe, and the recompence ſhall enſue the loſs.

(p) 5.E.4.4.lib.1.fol.100. Shelley's caſe. 27.H.8.Dier Buckenhãs caſe.32.H.8.gard.Brooke 93.13.H.7.6.
(q) 16.E.3. age.46.
Pl.Com.292. & 515. See more of this in the chapter of Warranties.

If a man giveth lands to a man, to have and to hold to him and his heirs on the part of his mother, yet the heirs of the part of the father ſhall inherit; for no man can inſtitute a new kind of inheritance not allowed by the law, and the words (of the part of his mother) are voide, as in the caſe that Littleton putteth in this chapter. If a man giveth lands to a man to him and his heirs males, the law reſpecteth this word males, becauſe there is no ſuch kind of inheritance, whereof you ſhall read more in his proper place.

A man hath iſſue a ſon, and dieth, and the wife dieth alſo, lands are letten for life, the remainder to the heirs of the wife, the ſon dieth without iſſue, the heirs of the part of the father ſhall inherit, and not the heires of the part of the mother, becauſe it veſted in the ſon as a Purchaſer. And the rule of Littleton holdeth as well in other kind of Inheritances, as in Lands and Tenements. (r) And therefore if there be Lord, ſem meſne, and tenant, and the Meſne bind her ſelf and her heirs by her Deed to the acquital of the tenant, the meſne take husband, the Tenant by his Deed granteth to the husband and his heirs, that he or his heirs ſhall not be bound to acquital, the husband and wife have iſſue, and die, this iſſue, being bound as heir to his mother ſhall not take benefit of the ſaid grant of diſcharge, for that extends to the heirs of the part of the father, and not to the heirs of the part of the mother, and therefore the heir of the part of the mother was bound to the Acquital. And thus much for the better underſtanding of Littletons Caſes concerning the heir of the part of the mother ſhall ſuffice.

(r) 38. E. 3.12.

¶ *Mes ſi home preſt feme inheretrix, &c.* Here there is another maxime, (t) That whenſoever Lands do deſcend from the part of the mother, the heirs of the part of the father ſhall never inherit. And likewiſe when lands deſcend from the part of the father, the heirs of the part of the mother ſhall never inherit. Et ſic paterna paternis, & è converſo, materna maternis. For more manifeſtation hereof, and of that which hereafter ſhall be ſaid touching Deſcents, ſee a Table in the end of this chapter.

(t) 39.E.3.25.49.E.3.12

¶ *Avera la terre per Eſcheat.* (u) Eſcheat, Eſchaeta is a word of art, and derived from the French word Eſchear (id eſt) cadere, excidere or accidere, and ſignifieth properly when by accident the lands fall to the Lord of whom they are holden, in which caſe we ſay the fee is Eſcheated. And therefore of ſome, Eſcheats are called excadentiæ or terræ excadentiales (w) Dominus vero capitalis loco hæredis habetur quoties per defectum vel delictum extinguitur ſanguis ſui tenentis, loco hæredis & haberi poterit niſi per modum donationis ſit reverſio cujuſque tenementi. And Ockam (who wrote in the raign of Henry the ſecond) treating of tenures of the King ſaith. Porro eſchaetæ vulgo dicuntur, quæ decidentibus hiis quæ de Rege tenent, &c. cum non exiſtit ratione ſanguinis hæres ad fiſcum relabuntur. (x) So as an Eſcheat doth happen two manner of wayes, aut per defectum ſanguinis, i. for default of heir, aut per delictum tenentis. i. for felonie, and that is by judgement three manner of wayes, aut quia ſuſpenſus per collum, aut quia abjuravit regnum, aut quia utlegatus. And therefore, they which are hanged by Martial law, in furore belli forfeit no lands: and ſo in like caſes Eſcheats by the Civilians are called Caduca.

(u) Vide ſect. 130. Glanvil.lib.7.cap.17. Bract. lib.2.fol.118. Fleta lib.5.cap.5.&lib. 3. cap.10. Britton.ca.37.& cap.119. F.N.B. 100. Tr.19.E.1.in banco Rot. 25.
(w) Fleta lib.6.cap.1. Ockam cap. quod non abſolvitur, &c.
(x) Pl.Com. Dame Hales caſe.

(y) The father is ſeiſed of lands in fee holden of I. S. the ſon is attainted of high treaſon, the father dieth, the land ſhall eſcheat to I. S. propter defectum ſanguinis; for that the father dyed without heir. And the King cannot have the land becauſe the ſon never had any thing to forfeit. But the King ſhall have the eſcheat of all the lands whereof the perſon attainted of high treaſon was ſeiſed, of whomſoever they were holden.

(y) Pl.Com.in Nicholls caſe.

(z) In an appeal of Death or other Felony, &c. proceſs is awarded againſt the defendant, and hanging the proceſs the defendant conveyeth away the land, and after is outlawed, the conveyance is good and ſhall defeat the Lord of his eſcheat, but if a man be indicted of Felony, and hanging the proceſs againſt him, he conveyeth away the land, and after is outlawed, the conveyance ſhall not in that caſe prevent the Lord of his eſchear. And the reaſon of this diverſity is manifeſt: For in the caſe of the appeal, the writ containeth no time when

(z) 8.E.3.f.37.30. H.6.5. Bract.l.2.tit. de Forf. Stam.Pl.cor.192.and according to this diverſity was it reſolved in 5.E.6. as it appeareth by my Lord Diers Manuſcript.

the Felony was done, and therefore the Eſcheate can relate to the outlawry pronounced. But the enditement containeth the time when the felony was committed, and therefore the eſcheat upon the outlawry ſhall relate to that time. Which caſes I have added, to the end the ſtudent may conceive, that the obſervation of Writs, Inditements, Proceſs, Judgments, and other Entries, doth conduce much to the underſtanding of the right reaſon of the Law.

(a) Mirror.ca.1.ſect.5. 51.H.3.ſtatutum de Scac. Britton fo. 33.34. Flet. lib.1.cap.36. & lib. 2.cap. 34.35. Regiſt.301.his Oath 18. E.1.Ro.Parl.21.E.1. Rot.1.29.E.1.ſtat.de Eſchaetoribus.14. E.3. c.8. 28.E.1.ca.18.F.N.B.100. c.Stamf.Prær.81. 1.H.8. ca. 8.3.H.8.ca.2. Capitula Eſchaetriæ in Vet.Magna carta.fo.160. 161. &c.

Of this word (eſchaeta) here uſed by our Author, cometh (a) Eſchaetor, an ancient Officer ſo called, becauſe his office is properly to look to Eſcheats, Wardſhips, and other caſualties belonging to the Crown. In ancient time there were but two Eſcheators in England, the one on this ſide Trent, and the other beyond Trent, at which time they had Subeſcheators. But in the raign of Edward the ſecond, the Offices were divided and ſeveral Eſcheators made in every County for life, &c. and ſo continued until the raign of Edward 3. And afterwards by the Statute of 14. E. 3 it is enacted by authority of Parliament, that there ſhould be as many Eſcheators aſſigned, as when King Edward 3. came to the Crown, and that was one in every County, and that no Eſcheator ſhould carry in his office above a year, and by another ſtatute to be in office but once in three years, the Lord Treaſurer nameth him.

And hereof alſo cometh eſchaetria, which ſignifieth the Eſcheatership or the office of the Eſcheater. But now let us hear what our Author will further ſay unto us.

¶ Et ſic vide, &c. This kind of ſpeech is often uſed by our Author, and doth ever import matter of excellent obſervation, which you may find in the Sections noted in the margent*.

* Sect.147.149.248. 289.417.667.&c.

And it is to be well obſerved that our Author ſaith, Sil ad naſcun heire, &c. la terre eſchaetra. In which words is implied a diverſity (as to the Eſcheate) between fee ſimple abſolute, which a natural body hath, and fee ſimple abſolute which a body politique or incorporate hath. (b) For if Land holden of I. S. be given to an Abbot and his ſucceſſors: In this caſe if the Abbot and all the covent die ſo that the body politick is diſſolved, the Donor ſhall have again this land, and not the Lord by eſcheat. And ſo if land be given in fee ſimple to a Dean and Chapter, or to a Maior and commonalty, and to their ſucceſſors, and after ſuch body politick or incorporate is diſſolved, the donor ſhall have again the land, and not the Lord by eſcheat. And the reaſon, and the cauſe of this diverſity is, for that in the caſe of a body politick, or incorporate the fee ſimples veſted in their politick or incorporate capacity created by the policy of man, and therefore the law doth annex a condition in law to every ſuch gift and grant, That if ſuch body politick or incorporate be diſſolved, that the Donor or grantor ſhall re-enter, for that the cauſe of the gift or grant faileth, but no ſuch condition is annexed to the eſtate in fee ſimple veſted in any man in his natural capacity, but in caſe where the Donor or Feoffor reſerveth to him a tenure, and then the law doth imply a condition in law by way of eſcheat. Alſo (as hath been ſaid) no writ of eſchete lieth but in the three caſes aforeſaid, and not where the body politick or incorporate is diſſolved.

(b) E.4.11.12. Fitz N.B.33.9.E.3.26. 17.E.2.ſtat.de templariis

Sect. 5.

¶ NOw cometh our Author to the deſcent between brethren, which he purpoſely omitted before. ¶ Deſcent, deſcenſus cometh of the latin word deſcendo, and in the legal ſenſe, it ſignifieth when lands do by right of blood fal unto any after the death of his Anceſtors: or a deſcent is a means whereby one doth derive him title to certain lands, as heir to ſome of his Anceſtors. And of this, and of that which hath been ſpoken doth ariſe another diviſion of eſtates in fee ſimple, viz. every man that hath a lawful eſtate in fee ſimple, hath it either by deſcent, or by purchaſe.

¶ Item ſi ſoint trois freres, & le mulnes frere purchaſe terres en fee ſimple & devie ſauns iſſue, leigne frere avera la terre per diſcent & nemy le puiſne, &c. Et auſi ſi ſoint trois freres & le puiſne purchaſe terres en fee ſimple & devie ſans iſſue, leigne frere avera la terre per diſcent &

ALſo if there be three brethren, and the middle brother purchaſeth lands in fee ſimple, and die without iſſue, the elder brother ſhall have the Land by deſcent, and not the younger, &c. And alſo if there be three brethren, and the youngeſt purchaſe lands in fee ſimple, and die without iſſue, the eldeſt brother ſhall

nemy

nemy le mulnes, pur ceo que leigne eſt pluis digne de ſanke.

have the land by deſcēt & not the middle, for that the eldeſt is moſt worthy of blood and all deſcendant from him before the female, and the female of the part of the father before the male or female of the part of the mother, &c. becauſe the female of the part of the father is of the worthieſt blood. (c) And therefore among the males the eldeſt brother and his poſterity ſhall inherit lands in fee ſimple as heir before any younger brother, or any deſcending from him, becauſe (as Littleton ſaith) he is pluis digne de ſanke. Quod prius eſt dignius eſt, and qui prior eſt tempore potior eſt jure. Si quis plures filios habuerit jus proprietatis primo deſcendit ad primogenitum, eo quòd inventus eſt primo in rerum natura. In King Alfreds time Knights fees deſcended to the eldeſt ſon, for that by diviſion of them between males the defence of the Realm might be weakned, but in thoſe dayes Socage fee was divided between the heirs males, and therewith agreeth Glanvil. * Cum quis hæreditatem habens moriatur, &c. ſi plures reliquerit filios, tunc diſtinguitur utrum ille fuerit miles, ſive per feodum militare tenens, aut liber Sockmannus, quia ſi miles fuerit aut per militiam tenens, tunc ſecundum jus regni Angliæ primogenitus filius patri ſuccedit in toto, &c. ſi verò fuerit liber Sockmannus, tunc quidem dividetur hæreditas inter omnes filios, &c. But hereof more ſhall be ſaid hereafter in his proper place.

¶ *Leigne eſt pluis digne de ſanke.* It is a maxime in law, that the next of the worthieſt blood ſhall ever inherit, as the male

(c) Britton cap. 119. Bract. lib. 2. cap. 30. 277. 279. 3. E. 3. 26. 3. Eliz. Dyer 138. Stanford prær. 52. 58. 3. E. 1. tit. avowry. 235. 32. E. 3. diſcent. 80. Bra. lib. 4. 211. Fleta lib. 6. ca. 2. Glanvill lib. 7. ca. 1. Mirror cap. 1. Sect. 3. * Glanvil lib. 7. cap. 3. & ca. 1. Vid. Pl. Com. 229. b.

Sect. 6.

¶ Item eſt aſcavoir, q̄ nul avera terre de fee ſimple per diſcent come heire a aſcun home, ſi non que il ſoit ſon heir dentire ſanke. Car ſi home ad iſſue deux fits per diverſ venters et leigne purchaſe terres en fee ſimple & morust ſans iſſue, le puiſne frere navera la terre, mes luncle leigne frere ou auter ſon prochein coſin ceo avera, pur ceo que le puiſne frere eſt de demy ſanke al eigne frere.

ALſo it is to be underſtood, that none ſhal have land of fee ſimple by deſcent as heir to any man, unleſs he be his heir of the whole blood, for if a man hath iſſue two ſons by divers venters, and the elder purchaſe lands in fee ſimple, and die without iſſue, the younger brother ſhall not have the land, but the uncle of the elder brother, or ſome other his next coſin ſhall have the ſame, becauſe the younger brother is but of half blood to the elder.

¶ NO man can be heir to a fee ſimple by the common law, (d) but he that hath ſanguinem duplicatum, the whole blood, that is both of the father and of the mother, ſo as the half blood is no blood inheritable by deſcent, becauſe that he that is but of the half blood cannot be a compleat heir, for that he hath not the whole and compleat blood, and the law in deſcents in fee ſimple doth reſpect that which is compleat and perfect. And this maxime doth not only hold where lands (whereof Littleton here ſpeaketh) are claimed or demanded as heir, (e) but alſo in caſe of appeal of death: for if one brother be ſlain, the other brother of the half blood ſhall never have an appeale (eldeſt he ſhall recover nothing therein either in the realty or perſonalty) becauſe in the eye of the law he is not heir to him. Alſo this Rule extends to a warranty as our Author himſelf elſewhere ſheweth.

(d) Bract. lib. 4. idem lib. 2. fo. 65. Britton ca. 119. Fleta lib. 6. ca. 1. 1. E. 3. 19. John Giffords caſe. 31. E. 3. Conterpl. de voucher 88. 40. Aſſ. 6. 4. E. 2. Formd. 49. Vid. Ratcliffs caſe li. 3. fo. 40. 41.

(e) 7. E. 4. 15.

Sect. 732.

Sect. 7.

¶ ET ſi home ad iſſue fits & file

AND if a man hath iſſue a ſon and a

¶ This is put for an example to illuſtrate that which hath

ween ſaid, and needeth no explanation. And herewith agreeth Britton.

Britton cap. 119.

per un venter, & fits p auter venter, & le fits del primer venter purchaſe terres en fee, & mor ſans iſſue, la ſoer avera la terre p diſcent, come heire a ſa frere & nemy le puiſne frere, pur ceo que la ſoer eſt de le entire ſanke a ſon eigne frere.

daughter by one venter, and a ſon by another venter, & the ſon of the firſt venter purchaſe lands in fee and dy without iſſue, the ſiſter ſhall have the lād by diſcent as heir to her brother, & not the younger brother, for that the ſiſter is the whole blood of her elder brother.

Sect. 8.

¶ *Seiſie de terres en fee ſimple.* Theſe words exclude a ſeiſin in fee taile, albeit he hath a fee ſimple expectant. (f) And therefore if lands be given to a man & his wife, and to the heirs of their two bodies, the remainder to the heirs of the husband, and they have iſſue a ſon, and the wife dyeth, and he taketh another wife, and hath iſſue a ſon, the father dyeth, the eldeſt ſon entreth, and dieth without iſſue, the ſecond brother of the half blood ſhall inherit, becauſe the eldeſt ſon by his entry was not actually ſeiſed of the fee ſimple, being expectant but only of the eſtate taile. And the Rule is, that poſſeſſio fratris de feodo ſimplici facit ſororem eſſe hæredem, and here the eldeſt ſon is not poſſeſſed of the fee ſimple but of the eſtate taile. And where Littleton ſpeaketh only of lands, (g) yet there ſhall be poſſeſſio fratris, of an vſe, of a ſeignyory, a rent, an advowſon, and of other hereditaments.

(f) 24.E.3.24.30. 28.E.3.Count de Vouch. 38. 32.E.3.tit.voucher. 37.Aſſ.p.4. 40.E.3.9. 42.E.3.10. 39.E.3.fol.13. 7.H.5.3.

(g) 5.E.4.fo.7. Pl.Com.fo.58.in Wimbiſhes caſe.

¶ *Et leigne fits enter* (h) Theſe words are materially adde when the father dies ſeiſed of lands in fee ſimple, for if the eldeſt ſon doth not in that caſe enter, then without queſtion the yongeſt

(h) 10.Aſſ.27.34.Aſſ.10. 31.E.3.Count de Vourchee 88.32.E.3.tit. Vouch.94.

¶ Et auxi ou hõe eſt ſeiſie de terres en fee ſimple, & ad iſſue fits & file per un venter, & fits per auter venter, & mor, & leigne fits enter, & mor ſans iſſue, la file avera les tenements, & nemy le puiſne fits, uncore le puiſne fits eſt heire a le pere, mes nemy a ſon frere, mes ſi leigne fits ne entra en la tre apres la mort ſon pere, mes mor devant aſcun entrie fait per luy, donqs le puiſne frere poit entrer, & avera le terre come heire a ſon pere. Mes lou leign fits en le caſe avantdit entra apres la mort ſon pere, & ad ent poſſeſſion, donqs la ſoer avera la terre

And alſo where a man is ſeiſed of lands in fee ſimple, and hath iſſue a ſon and daughter by one venter, and a ſon by another venter, and dy, and the eldeſt ſon enter, and die without iſſue, the daughter ſhall have the land, & not the yonger ſon, yet the yonger ſon is heir to the father but not to his brother, but if the elder ſon doth not enter into the lād after the death of his father but die before any entry made by him then the yonger brother may enter & ſhall have the land as heir to his father: but where the elder ſon in the caſe aforeſaid enters after the death of his father, & hath poſ-

Quia

Quia poſſeſſio fratris de feodo ſimplici facit ſororem eſſe hæredem. Mes ſi ſont deux freres per diuers venters, & leigne eſt ſeiſie de terre en fee, & mor ſans iſſue, & ſon Uncle entra come prochein heire a luy quel auxy mor ſans iſſue, ore le puiſne frere puit aver la terre come heire al Uncle, pur ceo que il eſt de lentier ſanke a luy, coment que il ſoit de demy ſanke a ſon eigne frere.

ſeſſion there the ſiſter ſhal have the land, becauſe *Poſſeſſio fratris de feodo ſimplici facit ſororem eſſe hæredem.* But if there be 2. brothers by divers venters, & the elder is ſeiſed of land in fee, and die without iſſue, and his uncle enter as next heir to him, who alſo die without iſſue, now the yonger brother may have the land as heir to the uncle, for that he is of the whole blood to him, albeit he be but of the half blood to his elder brother.

ſon ſhall be heir, becauſe as it hath been ſaid before regularly he muſt make himſelf heir to him that was laſt actually ſeiſed (or to the purchaſor) and that was to the father where the eldeſt ſon did not enter. And therefore Littleton adverts that the ſon is heir to the father. (i) But when the eldeſt ſon in this caſe doth enter, then cannot the youngeſt ſon being of the half blood be heir to the eldeſt, but the land ſhall deſcend to the ſiſter of the whole blood. Yet in many caſes albeit the ſon doth not enter into lands deſcended in fee ſimple, the ſiſter of the whole blood ſhall inherit, and in ſome caſes where the eldeſt ſon doth enter, yet the younger brother of the half blood ſhall be heir.

(i) 11.H.4.11. 40.E.3.39. 45.E.3.13. 40.Aſſ.p.6. 7.H. Ratcliffs caſe.lib.3.fo.41

(k) If the father maketh a leaſe for years, and the leſſee entreth and dieth, the eldeſt ſon of the half blood ſhall have the poſſeſſion of the eldeſt ſon, ſo as he is actually ſeiſed of the fee ſimple, and conſequently the ſiſter of the whole blood is to be heir. The ſame law it is if the lands be holden by Knights ſervice, and the eldeſt ſon is within age, and the Gardian entreth into the lands. And ſo it is if the Gardian in Socage enter.

(k) 5.E.4.7.b. 3.H.7.5. 8.Aſſ.p.6. 45.E.3.tit. Releaſes.28.

But in this caſe aforeſaid, if the father make a leaſe for life or a gift in taile and dieth, and the eldeſt ſon dieth in the life of Tenant for life or Tenant in taile, the younger brother of the half blood ſhall inherit becauſe the Tenant for life or Tenant in taile is ſeiſed of the freehold, and the eldeſt ſon had nothing but Reverſion expectant upon that freehold or eſtate taile, and therefore the youngeſt ſon ſhall inherit the land as heir to his father, who was laſt ſeiſed of the actual freehold. And albeit a Rent had been reſerved upon the leaſe for life, and the eldeſt ſon had received the Rent and died, yet it is holden by ſome * that the younger brother ſhall inherit becauſe the ſeiſin of the Rent is no actual ſeiſin of the freehold of the land. But 35. Aſſ. pl. 2. ſeemeth to the contrary, becauſe the Rent iſſueth out of the land and is in lieu thereof, wherein the only queſtion is, whether ſuch a ſeiſin of the Rent be ſuch an actual ſeiſin of the land in the eldeſt ſon as the ſiſter may in a writ of Right make her ſelf heir of this land to her brother. But it is clear that (l) if there be baſtard eigne, and mulier puiſne, and the father maketh a leaſe for life or a gift in taile be reſerving a Rent and die, and the baſtard receive the Rent and die, this ſhall bar the mulier, for the reaſon of that ſtandeth upon another maxime as ſhall manifeſtly appear in his apt place, Sect. 399.

* 7.H.5.34. per Halls & Logdington. 35.Aſſ.p.2. (l) 14.E.2.Baſtard 26. Vid.Sect.399.

¶ *Seiſie desterres.* (m) But in this caſe if the eldeſt ſon doth enter and get an actual poſſeſſion of the fee ſimple, yet if the wife of the father be indowed of the third part and the eldeſt ſon dieth, the younger brother ſhall have the Reverſion of this third part notwithſtanding the elder brothers entry, becauſe that his actual ſeiſin which he got thereby was by the indowment defeated. But if the eldeſt ſon had made a leaſe for life, and the Leſſee had indowed the wife of the father, and Tenant in Dower had died, the daughter ſhould have had the Reverſion becauſe the Reverſion was changed and altered by the Leaſe for life, and the Reverſion is now expectant on a new eſtate for life.

(m) 7.H.5.2.3.4.

¶ *Enter.* Hereupon the queſtion groweth, whether if the father be ſeiſed of divers ſeveral parcels of lands in one County, and after the death of the father the ſon entreth into one parcel generally, and before any actual entry into the other dieth, this general entry into part ſhall veſt in him an actual ſeiſin in the whole, ſo as the ſiſter ſhall inherit the whole. And this is

Quære in 21. H. 7. 33. 2.

21.H.7.33.2.

And ſome do take a diverſity when an entry ſhall veſt, or deveſt an Eſtate, that there muſt be ſeveral Entries into the ſeveral parcels, but where the poſſeſſion is in no man, but the freehold in law is in the heir that entreth, there the general Entry into one part reduceth all into his actual poſſeſſion. And therefore if the Lord entreth into a parcel generally for a Mortmain, or the Feoffor for a condition broken, or the Diſſeiſee into parcel generally, the Entry ſhall not veſt nor deveſt in theſe or like caſes, but for that parcel. But when a man dies ſeiſed of divers parcels in poſſeſſion, and the freehold in law is by law caſt upon the heir, and the poſſeſſion in no man, there the Entry into parcel generally ſeemeth to veſt the actual poſſeſſion in him in the whole. But if this Entry in that caſe be ſpecial, viz. that he enter only into that parcel and into no more, there it reduceth that parcel only into actual poſſeſſion.

¶ *Home ſeiſie des terres.* What then is the law of a Rent, Advowſon, or ſuch things that lie in Grant? (g) If a Rent, or an Advowſon do deſcend to the eldeſt ſon, and he dieth before he hath ſeiſin of the Rent, or preſent to the Church, the Rent or Advowſon ſhall deſcend to the youngeſt ſon, for that he muſt make himſelf heir to his father, as hath been oftentime ſaid before. The like law is of Offices, Courts, Liberties, Franchiſes, Commons of Inheritance, and ſuch like. (h) And this caſe differeth from the caſe of the Tenant by the courteſie, for there if the wife dieth before the Rent day, or that the Church become voyd, becauſe there was no laches or default in him, nor poſſibility to get ſeiſin, the law in reſpect of the iſſue begotten by him will give him an Eſtate by the courteſie of England. But the caſe of the deſcent to the youngeſt ſon ſtandeth upon another reaſon, viz. to make himſelf heir to him that was laſt actually ſeiſed, as hath been ſaid.

(g) 19.E.2.quare imped. 177. 3.H.7.5.

(h) 7.E.3.66.tit.bar.293. 3.H.7.5.

¶ *En fee ſimple.* (i) For half blood is not reſpected in Eſtates in taile, becauſe that the iſſues do claim in by deſcent, per formam Doni, and the iſſue in taile is ever of the whole blood to the Donee.

(i) 8.E.3.11. 49.E.3.12. Ratcliffs caſe.lib.3.f.41.

¶ (k) *Poſſeſſio fratris de feodo ſimplici facit ſororem eſſe hæredem.* Hereupon four things are to be obſerved, every word almoſt being operative, and material. *Firſt*, That the brother muſt be in actual poſſeſſion. For Poſſeſſio eſt quaſi pedis poſitio. *Secondly*, De feodo ſimplici, exclude Eſtates in taile: *Thirdly*, Facit ſororem eſſe hæredem. So as (l) Soror eſt hæres facta, and therefore ſome act muſt be done to make her heir, and the younger ſon is hæres natus, (m) if no act be done to the contrary. And albeit the words be facit ſororem eſſe hæredem, yet this doth extend to the iſſue of the ſiſter, &c. who ſhall inherit before the younger brother. *Fourthly*, of Dignities wherrof no other poſſeſſion can be had but ſuch as deſcend (as to be a Duke, Marquels, Earle, Vicount, or Baron) to a man and his heirs, there can be no poſſeſſion of the brother to make the ſiſter to inherit, but the younger brother being heir (as Littleton ſaith) to the father, ſhall inherit the Dignity inherent to the blood, as heir to him that was firſt created Noble.

(k) Bracton lib.2.fo.65. & lib.4.fol.279. Britton cap.119. Flet.li.6.c.1.24.E.3.30.

(l) Ratcliffs caſe lib.3. fol.42.

(m) Britton cap.119.

And you ſhall underſtand that concerning Deſcents there is a law, parcel of the laws of England, called Jus coronæ, and differeth in many things, from the general law concerning the Subject. As for example. The King in any ſuit for any thing that pertains to the crown ſhall not ſhew in certain his coſinage as a ſubject ſhall do, or as he himſelf ſhall do for things touching his Dutchy. (n) And in the caſe of the King, if he hath iſſue a ſon, and a daughter by one venter, and a ſon by another venter, and purchaſeth lands and dieth, and the eldeſt ſon enter and dieth without iſſue, the daughter ſhall not inherit theſe lands, nor any other fee ſimple lands of the crown, but the younger brother ſhall have them. Wherein note that neither poſſeſſio fratris doth hold of lands of the poſſeſſions of the crown, nor half blood is no impediment to the deſcent of the lands of the crown, as it fell out in experience after the deceaſe of King Edward the ſixth to Queen Mary, and from Queen Mary, to Queen Elizabeth, both which were of the half blood, and yet inherited not only the lands which King Edward or Queen Mary purchaſed, but the ancient lands parcel of the crown alſo.

6.H.4.1.

(n) 34.H.6.fol.34. Pl.Com.fol.245. 25.E.3.ca. de natis ultra mare.

A man that is King by deſcent of the part of his mother, purchaſe lands to him and his heirs and die without iſſue, this land ſhall deſcend to the heir of the part of the mother, but in the caſe of a ſubject, the heir of the part of the father ſhall have them,

Pl.Com.ubi ſupra.

So King Henry the eighth purchaſed lands to him and his heires, and died having iſſue two daughters, the Lady Mary, and the Lady Elizabeth, after the deceaſe of King Edward, the eldeſt daughter Queen Mary did inherit only, all his lands in fee ſimple. For the eldeſt daughter, or ſiſter of a King ſhall inherit all his fee ſimple lands. So it is if the King purchaſeth lands of the cuſtome of Gavelkind, and die having iſſue divers ſons, the eldeſt ſon ſhall only inherit theſe lands. And the reaſon of theſe caſes is, for that the quality of the perſon both in theſe and many other like caſes alter the deſcent, ſo as all the lands and poſſeſſions wherrof the King is ſeiſed in jure coronæ, ſhall ſecundum jus coronæ, attend upon and follow the crown, and therefore to whomſoever the crown deſcend, thoſe lands and poſſeſſions deſcend alſo, for the crown and the lands wherrof the King is ſeiſed in jure Coronæ, are con-

Pl.Com.fol.247.

concomitantia. If the right heir of the crown be attainted of Treaſon, yet ſhall the crown deſcend to him, and eo inſtante (without any other reverſal) the Atteinder is utterly avoided, as it fell out in the caſe of Henry the ſeventh. (o) And if the King purchaſe lands to him and his heirs, he is ſeiſed thereof in jure Coronæ, à fortiori, when he purchaſes land to him, his heirs and ſucceſſors.

Pl.Com.238. 1.H.7.fol.4. (o) 43.E.3.fol.20.

But here of this little taſte ſhall ſuffice.

Sect. 9.

¶ Et eſt aſcauoir que ceſt paſol (enheritãce) neſt pas tãtſolement entendue, lou home ad tres ou tenements per diſcent denheritage, mes auxi chelcun fee ſimple, ou taile que home ad p ſon purchaſe puit eſtre dit enheritance, pur ceo que ſes heires luy purront enheriter, Car en briefe de Dꝛoit que home poꝛtera de terre que fuit de ſon purchaſe demeſne, cõe apiert p le Regiſt.

And it is to wit, that this word (*inheritance*) is not only intended where a man hath Lands or Tenements by deſcent of Inheritage, but alſo every fee ſimple or taile which a man hath by his purchaſe may be ſaid an Inheritance, becauſe his heirs may inherit him. For in a Writ of right which a man bringeth of land that was of his own purchaſe, the Writ ſhall ſay, *Quam clamat eſſe jus & hæreditatem ſuam.* And ſo ſhall it be ſaid in divers other Writs which a man or woman bringeth of his own purchaſe, as appears by the Regiſter.

¶ *Et eſt aſcavoir.* This kind of ſpeech is uſed twice in this chapter, and oftentimes by our Author in all his three books, and ever teacheth us ſome Rule of law, or general or ſure leading point, as you ſhall perceive by reading, and obſerving of the ſame, which for the eaſe of the ſtudious Reader I have obſerved.

Sect.45.46.57.59.80. 100.146.164.170.184. 229.243.259.274.280. 293.300.305.419.420. 421.489.632.697.749.

¶ *Quam clamat eſſe jus & hæreditatem ſuam.* (a) Here our Author declareth the right ſignification of this word (inheritance.) And true it is that in the writ of right patent, &c. quando dominus remittit Curiam ſuam, The words of the writ be, Quam clamat eſſe jus & hæreditatem ſuam. And in the Præcipe in capite, in a cui in vita, (b) when the Defendant claimeth by purchaſe, the writ is quam clamat eſſe jus & hæreditatem ſuam. And with Littleton agreeth the Regiſter, fol. 4. & 232. and the book in 49. E. 3. 22. againſt ſundain opinions, 7.H.4. 5. 10.H.6.9. 39.H.6. 38. Pl. Com. Wimbelhes caſe 47.

(a) Sect.732. Bract.lib.2.fo.62.b. Fleta lib.6.ca.1.

(b) Regiſt.fol.1.2.

Regiſt.fol.4.232.49.E.3. 22.7.H.4.5. 10.H.6.9. 39.H.6.38. 6.E.3.20. Pl.Com.Wimbelhes caſe 47.& 58.b.

And yet in 7.H. 4. 5. which is the book of the greateſt weight. Sir William Thirning chief Juſtice of the common bench (as it ſeemeth doubting of it) went into the Chancery to enquire of the Chancery men the form of the writ in that caſe, and they ſaid that the form was both the one way and the other, ſo as thereby the opinion of Littleton is confirmed, and the book in 6. E. 3. fol. 30. is notable, for there in an Action of waſte the Plaintiff ſuppoſed, that the Defendant did hold de hæreditate ſua, and it is ruled, that albeit the Plaintiff purchaſed the Reverſion, yet the writ ſhould ſerve. And there it is ſaid, It hath been ſeen, that in a Cui in vita, the writ was, which the Demandant claimed as her right and inheritance, when it was her purchaſe. And to this point wherein there might ſeem ſome contrariety in books is manifeſtly cleared. But in the ſtatute of W. 2. cap. 5. de hæreditate uxorum, by conſtruction of the whole ſtatute is taken only for the wives Inheritance by deſcent and not by purchaſe, as appeareth in 1. E. 2. tit. Quare imped. 43.35.H.6.54.F.N.B.34.b.

6.E.3.30.

W.2.ca.5. 1.E.2.tit.quare imped. 43.35.H.6.54. F.N.B.34.b.

There be ſome that have an Inheritance (c) and have it neither by deſcent nor properly by purchaſe but by creation, as when the King doth create any man a Duke, a Marqueſs, Earle, Viſcount, or Baron to him and his heirs, or to the heirs males of his body, &c. he hath an Inheritance therein by creation. A man may have an Inheritance in title of Nobility and Dignity three manner of wayes, that is to ſay, by Creation, by Diſcent, and by Pur-

(c) Lib.6.fol.52.53. Counteſs de Rutlands caſe lib.8 fol.16.17. the Princes caſe.

Preſcription. By creation two manner of ordinary wayes (for I will not ſpeak of a creation by Parliament) by writ, and by Letters patents. Creation by writ is the ancienter way, and heir it is to be obſerved; that a man ſhall gain an Inheritance by writ. King Richard the ſecond created John Beauchamp de Holt Baron of Kederminſter by his Letters Patents, bearing date the 10. of October, anno regni ſui 11. before whom there was never any Baron created by Letters Patents, but by writ. And it is to be obſerved, that if he be generally called by writ to the Parliament, he hath a fee ſimple in the Barony without any words of Inheritance. But if he be created by Letters Patents, the ſtate of Inheritance muſt be limited by apt words, or elſe the Grant is void. If a man be called by writ to the Parliament, and the writ is delivered unto him, and he dieth before he commeth and ſits in Parliament, whether he was a Baron or no? And it is to be anſwered that he was no Baron, for the direction and delivery of the writ to him maketh not him Noble; for the better underſtanding whereof it is to be known that the words of the writ in that caſe are, Rex &c. E. B. de D. Chivalier ſalutem. Quia de adviſamento & aſſenſu concilii noſtri pro quibuſdam arduis & urgentibus negotiis ſtatum & defenſionem regni noſtri Angliæ, &c. concernentibus quoddam Parliamentum noſtrum apud civitatem Weſtm̃. à 21. Octob. proxim. futuro teneri ordinavimus, & ibid. vobiſcum & cum Prælatis, Magnatibus & Proceribus dicti regni noſtri colloquium habere & tractatum, vobis in fide & ligeancia quibus nobis tenemini firmiter injungendo mandamus, quod conſideratis dictorum negotiorum arduitate, & periculis imminentibus ceſſante excuſatione quacunque, dictis die & loco perſonaliter interſitis nobiſcum & cum Prælatis, Magnatibus, & proceribus ſupradictis, ſuper dictis negotiis tractatur' veſtrumque concilium impenſur', &c. And this writ hath no operation or effect until he ſit in Parliament, and thereby his blood is ennobled to him and his heirs lineal, and thereupon a Baron is called a Peere of Parliament. (d) And if iſſue be joyned in any action, whether he be a Baron, &c. or no, it ſhall not be tryed by Jury, but by the Record of Parliament, which could not appear unleſs he were of the Parliament. Therefore a Duke, Earle, &c. of another Kingdom, are not to be ſued by theſe names here, for that they are not Peeres of our Parliament. And albeit the creation by writ is the ancienter, yet the creation by Letters Patents is the ſurer, for he may be ſufficiently created by Letters Patents, and made Noble, albeit he never ſit in Parliament.

Lib. 6. fol. 52. 53. Counteſs of Rutlands caſe
8. H. 6. 10. 48. E. 3. 30.
35. H. 6. 46. Pl. com. 223.
(d) 35. H. 6. 46.
48. E. 3. 30. b.
48. Aſſ. p. 6. 22. Aſſ. p. 24.
Regiſt. 287.
11. E. 3. breve 472.
20. E. 4. 6.

(e) And it is to be obſerved that Nobility may be granted for terme of life, by act in law without any actual creation; as if a Duke take a wife, by the intermarriage he is a Dutcheſs in law, and ſo of a Marquels, an Earle, and the reſt, and in ſome other caſe. And there is a diverſity between a woman that is Noble by Deſcent, and a woman that is Noble by marriage. (f) For if a woman that is Noble by Deſcent, marry one that is under the degree of Nobility, yet ſhe remaineth Noble ſtill; but if ſhe gain it by marriage, ſhe loſeth it, if ſhe marry under the degree of Nobility, and ſo is the Rule to be underſtood, Si mulier nobilis nupſerit ignobili deſinit eſſe nobilis. (g) But if a Dutcheſs by marriage marrieth a Baron of the Realm ſhe remaineth a Dutcheſs and loſeth not her name, becauſe her husband is Noble, & ſic de cæteris.

(e) Lib. 6. fol. 52. 52. Counteſs de Rutlands caſe.
2. H. 6. 11. 22. Aſſ. 24.
12. E. 3. breve 254. 8. H. 4. 19. 11. H. 4. 15.
Vide Fleta lib. 6. ca. 10.
(f) Lib. 4. fo. 118. Actons caſe. Tempore Mariæ Reginæ.
Brook noſme de dignity 69. 14. H. 6. 18. 2. H. 6. 11.
(g) 22. H. 6. 52.

And as an Eſtate for life may be gained by marriage, ſo may the King create either man or woman Noble for life (h) but not for years, becauſe then it might go to Executors or Adminiſtrators. The true diviſion of perſons is, that every man is either of Nobility, that is, a Lord of Parliament of the upper Houſe, or under the degree of Nobility, amongſt the commons, as Knights, Eſquires, Citizens and Burgeſſes of the lower houſe of Parliament, commonly called the houſe of Commons, and he that is not of the Nobility is by intendment of law among the commons.

(h) Lib. 9. fol. 97. 98. Sir George Reynels caſe.

¶ *Come appiert per le Regiſter.* Which book in the ſtatute of W. 2. ca. 24. is called Regiſtrum de Cancellaria, becauſe it containeth the forms of writs at the common law that iſſue out of the Chancery, tanquam ex officina Juſticiæ. There is a Regiſter of original writs, and a Regiſter of judicial writs, but when it is ſpoken generally of the Regiſter it is meant of the Regiſter original. For the Antiquity and Excellency of this book, ſee in my Preface to the eighth part of my Commentaries. This Excellent book our Author vouchſeth divers times in their books, and ſo doth he divers other Authorities in law of ſeveral kinds, but with this obſervation, that he citeth no Authority, but when the caſe is rare or may ſeem doubtful, which appeareth in this, that he putteth no caſe in all his three books but hath warrant of good Authority in law. For he knew well the Rule, that perſpicua vera non ſunt probanda. And the like Obſervation is made of Juſtice Fitzherbert in his book of Natura brevium, that he never citeth Authority, but when the caſe is rare or was doubtful to him. The Authorities which our Author hath cited in his three books I have collected.

Vide Sect. 88. 94. 96. 101. 137. 234. 318. 823. 412. 420. 433. 514. 643. 644. 657. 660. 692. 702. 729.

Sect. 10.

ET de tiels choſes de ſur hõe poit aver un manuel occupation, poſſeſſion ou reſceit, ſicõe des terres, tenemẽts, rents, & hujuſmodi, la home dirra en count countant, & en plee pledant, que un tiel fuit ſeiſie en ſon demeſne come de fee. Mes de tiels choſes que ne giſont en tiel Manuel occupation, &c. ſicome de advowſon deſgliſe, & hujuſmodi, la il dirra que il fuit ſeiſie come de fee, & nemy en ſon demeſne come de fee, & en Latin il eſt en lun cas, quod talis ſeiſitus fuit, &c. in dominico ſuo ut de feodo, & en lauter caſe, quod talis ſeiſitus fuit, &c. ut de feodo.

AND of ſuch things whereof a man may have a Manual occupation, poſſeſſion or receipt, as of lands, tenements, Rents, and ſuch like, there a man ſhall ſay in his Count Countant, and Plea Pleadant, that ſuch a one was ſeiſed in his demeſne as of fee, but of ſuch things which do not lie in ſuch Manual occupation, &c. as of an Advowſon of a Church and ſuch like, there he ſhall ſay, that he was ſeiſed as of fee, and not in his Demeſne as of fee. And in Latine it is in one Caſe, *Quod talis ſeiſitus fuit in dominico ſuo ut de feodo*, and in the other Caſe, *Quod talis ſeiſitus, &c. ut de feod.*

¶ IN Count Countant, Count, i. e. narratio, commeth of the French word Conte, which in Latin is Narratio, and is vulgarly called a Declaration. The original writ is according to his name Breve and ſhort, but the Count which the Plaintiff or demandant make is more narrative and ſpacious and certain both in matter and in circumſtance of time and place, to the end the Defendant may be compelled to make a more direct anſwer; ſo as the writ may be compared to Logick, and the Count to Rhetorick, and it is that which the Civilians call a Libel. And in that ancient book of the Mirror of Juſtices, lib. 2. cap. des Loiets Contors are Serjants ſkilful in law, ſo named of the Count as of the principal part, and W. 2. c. 29. he is called Serjant counter. Mirror des Juſtices. W. 2. cap. 29.

¶ *En plea pleadant.* Placitum. Here Littleton teacheth good pleading in this point, of which in his third book and chapter of conſirmation, Sect. 534. he thus ſaith, Et ſaches mons ſits que eſt un des pluis honorables, laudables, & profitable choſes en noſtre ley, de aver le ſcience de bien pleader en actions reals & perſonels, & pur ceo, jeo toy counſaile eſpecialment de mettera ton courage, & cure de ceo apprender. And for this cauſe this word Placitum is derived à placendo, quia bene placitare ſuper omnia placet, and is not as ſome have ſaid, ſo called per Antiphraſin, quia non placet.

¶ *Seiſie*; Seiſitus commeth of the French word ſeiſin, i. e. poſſeſſio, ſaving that in the common law ſeiſed, or ſeiſin is properly applied to freehold, and poſſeſſed or poſſeſſion properly to goods and chattels, although ſometime the one is uſed inſtead of the other. Bract. lib. 4. fol. 263. Idem lib. 5. fol. 372. Britton fol. 205. 206. Fleta lib. 5. cap. 5. Stamf. prær. 8. Pl. Com. fol. 191. Wroteſleys caſe.

¶ *En ſon demeſne come de fee*, in Dominico ſuo ut in feodo. Dominicum is not only that Inheritance, wherein a man hath proper dominion or ownerſhip, as it is diſtinguiſhed from the lands which another doth hold of him in ſervice, but that which is manually occupied, manured, and poſſeſſed, for the neceſſary ſuſtentation, maintenance and ſupportation of the Lord and his houſhold, and ſavoureth de domo, of the houſe, either ad menſam, for his or their board and ſuſtentation, or manually received (as Rents) for bearing and defraying of neceſſary charges publike or private. Of theſe (ſaith our Author) he ſhould plead that he is ſeiſed in dominico ſuo ut de feodo, i. e. de feodo dominicali, ſeu terra Dominicali, ſeu reddito Dominicali, which is as much to ſay as Demeine or Demain, of the hand, i. e. manured by the hand, or received by the hand, and therefore he calleth it manual occupation, poſſeſſion or receipt. And in Domeſday demean land is called Inland, as for example, 4. bovatas terræ de Inland, & 10. bovatas in ſervitio. Domeſday.

¶ *En tiel manuel occupation, &c.* There is nothing in our Author but is worthy

of obſervation. Here is the firſt (&c.) and there is no (&c.) in all his three books (there being as you ſhall perceive very many) but it is for two purpoſes. Firſt it doth imply ſome other neceſſary matter. Secondly, that the ſtudent may together with that which our Author hath ſaid inquire what Authorities there be in law that treat of the matter, which will work three notable effects: Firſt, it will make him underſtand our Author the better: Secondly, it will exceedingly adde to the Readers invention. And laſtly, it will faſten the matter more ſurely in his memory, for which purpoſe I have for his eaſe in the beginning ſet down in theſe Inſtitutes, the effect of ſome of the principal Authorities in law as I conceive them concerning the ſame. In this place the (&c.) implieth poſſeſſion or receipt, and ſuch other matter as appeareth by my Notes in this Section. As for the Authorities of law, you ſhall find the effect of them in this Section, and the like of the reſt of the (&c.) which you ſhall find in the Sections hereafter mentioned, omitting thoſe (for avoyding of tediouſneſs) that either are apparent, or which are explained in ſome other places, viz. Sect. 26. 48. 102. 108. 120. 125. 136. 137. 146. 149. 154. 164. 166. 167. 168. 177. 179. 183. 184. 194. 200. 202. 210. 211. 217. 220. 226. 233. 240. 242. 244. 245. 248. 262. 264. 269. 270. 271. 279. 320. 322. 323. 325. 326. 327. 329. 330. 335. 336. 341. 347. 348. 349. 350. 352. 355. 356. 359. 364. 365. 374. 375. 377. 381. 384. 389. 393. 395. 397. 399. 401. 402. 410. 417. 428. 433. 447. 449. 464. 470. 471. 477. 483. 489. 500. 501. 522. 532. 552. 553. 556. 558. 562. 578. 591. 592. 593. 594. 603. 613. 624. 625. 630. 632. 634. 637. 638. 648. 659. 660. 661. 669. 687. 893. 700. 718. 745. 748. 749. All which I have obſerved and quoted here once for all for the eaſe of the ſtudious Reader.

Britton 205.206.optime
Fleta lib.6.cap.5.
Idem lib.3.cap.15.

¶ *Ut de feodo.* Where (ut) is not by way of ſimilitude, but to be underſtood poſitively that he is ſeiſed in fee. And ſo it is where one pleads a deſcent to one ut filio & hæredi, that is, to Jo. S. that is ſon and heir, & ſic de cæteris, where (ut) denotat ipſam veritatem.

(i) 7.E.3.63.24.E.3.74.
34.H.6.34.
19.E.3.quar.imp.154.
Mirror cap.2.ſect.17.

¶ *Sicome de advowſon.* Of an Advowſon (i) wherein a man hath as abſolute ownerſhip and property as he hath in Lands or Rents, yet he ſhall not plead, that he is ſeiſed in Dominico ſuo ut feodo, becauſe that Inheritance, favouring not de domo, cannot either ſerve for the ſuſtentation of him and his houſhold, nor any thing can be received for the ſame for defraying of charges. And therefore he cannot ſay, that he is ſeiſed thereof in dominico ſuo de feodo, whereby it appeareth how the common law doth deteſt Simony and all corrupt bargains for preſentations to any benefice, but that (k) idonea perſona for the diſcharge of the cure ſhould be preſented freely without expectation of any thing; nay ſo cautious is the common law in this point that the Pl. in a quare impedit ſhould recover no dammages for the loſs of his Preſentation until the ſtatute of W. 2. cap. 5. And that is the reaſon that Gardian in Socage (l) ſhall not preſent to an Advowſon, becauſe he can take nothing for it, and by conſequent he cannot account for it. And by the law he can meddle with nothing that he cannot account for. (m) And in a writ of Right of Advowſon, the Patron ſhall not alledge the Eſplees or taking of the Profits in himſelf but in his Incumbent. And hereby the old books ſhall be the better underſtood, viz. Bracton, lib. 4. tract. 3. cap. nu: 5. Eſt autem dominicum quod quis habet ad menſam, et proprie, ſicut ſunt Woodlands Anglice. And Fleta lib. 5. cap. 5. Eſt autem dominicum proprie terra ad menſam aſſignata. Dominicum etiam dicitur ad differentiam ejus quod tenetur in ſervitio. But of an Advowſon and ſuch like he ſhall plead, that he is ſeiſed de advocatione ut de feodo & jure.

(k) Lib.6.fo.51.Boſwels caſe.

(l) 8.E.2.Preſentment al Egliſe 10.
7.E.3.39.27.E.3.89.
29.E.3.5.
21.E.3.Eſtopel 240.
(m) 7.E.2.63.
Bracton 263.372.
Fleta lib.5.cap.5.

7.E.3.4.
45.E.3.1.

¶ *Advowſon.* Advocatio, ſignifying an advowing or taking into protection, is as much as jus patronatus. Sir William Herle in 7. E. 3. fol. 4. ſaith, that it is not long paſt, that a man did know what an Advowſon was, but when a man would grant an Advowſon he granted, Eccleſiam the Church, and thereby the Advowſon paſſed, Vide 45. E. 3. 5. But ſurely the word is of greater Antiquity, for in the Regiſter there is an original writ de recto Advocationis, and in the original writ of Aſſiſe de darreine preſentment the Patron is called Advocatus. (n) Vide W. 2. cap. 5. And ſo doth (o) Bracton call him. Advocatus autem dici poterit ille ad quem pertinet jus advocationis alicujus, ut ad Eccleſiam præſentet nomine proprio & non alieno. And (p) Fleta lib. 5. cap. 14. agreeth herewith almoſt totidem verbis: Advocatus eſt ad quem pertinet jus advocationis alterius Eccleſiæ, ut ad Eccleſiam nomine proprio non alieno poſſit præſentare. And (q) Britton cap. 92. The Patron is called Avow, and the Patrons are called advocati, for that they be either Founders, or Maintainers, or Benefactors of the Church either by building, dotation or encreaſing of it, in which reſpect they were alſo called Patroni, and the Advowſon jus Patronatus.

(n) W.2.ca.5.
(o) Bract.lib.4.fo.240.
(p) Fleta lib.5.cap.14.
(q) Britton cap.92.
(r) 33.H.6.11.b. per Priſot.
14.H.6.15.per Newton.
31.E.1.droit 68.69.
F.N.B. 31. b.
Lib.10.135.136.
R.Smiths caſe.
45.E.3. Fines 41.
45.E.3.12. 17.E.3.78.
17.E.2.Dower 163.

And it is to be underſtood that there is a great (c) diverſity inter advocationem medietatis Eccleſiæ, &c. & medietatem advocationis Eccleſiæ, and of their ſeveral Remedies for the ſame. For the Advowſon of the moity is when there be ſeveral Patrons, and two ſeveral Incumbents in one Church, the one of the one moity thereof, and the other of the other moity, and one part

part aſwell of the Church as of the Town aſſorted to the one, and the other part thereof to the other, and in that caſe each Patron if he be diſturbed ſhall have a quare impedit, quod permittat ipſum præſentare idoneam perſonam ad medietatem Eccleſiæ.

But if there be two coparceners, and they do agree to preſent by turn, each of them in truth hath but a moity of the church, but for that there is but one Incumbent, if either of them be diſturbed ſhe ſhall have a Quare impedit, &c. præſentare idoneam perſonam ad Eccleſiam; for that there is but one church and one Incumbent, and ſo of the like. But in (f) the ſaid caſe of two coparceners, one of them ſhall have a writ of Right of Advowſon de medietate advocationis, for in truth ſhe hath but a Right to a moity, but in the other caſe where there be two Patrons and two Incumbents in one church, each of them ſhall have a writ of Right of Advowſon de advocatione medietatis.

(f) Britton fol. 234. 31.E.1.droit.68.69. F.N.B.31. b.c.33.a. 5.H.7.8. 17.E.3.38.75.76. 7.E.3.327. 8.E.3.425. 22.Aſſ.p.33. 14.H.4.10. 33.E.3.quar.imp.196.

And as there may (as hath been ſaid) be two ſeveral Parſons in one church, ſo there may be two that may make but one Parſon in a church (t) Britton ſaith, Si aſcun Egliſe ſoit done a divers perſons per un ſole avowe nul ne ſe pura pleadre per aſſiſe de juris utrum ne nul eſtre implede ſans lautre, &c. And therewith agreeth Fleta. (u) Item licet aliqua Eccleſia diviſa fuerit inter duos, ſive bona ſua habeant communia ſive ſeparata, dum tamen unicum habeant advocatum nullus eorum ſine alio agere poterit vel implacitari. And Fitzh. ſaith, that two Prebendaries may be one Parſon of a church, who ſhall joyn in a Juris utrum, ſo as one Rectory may be annexed to two ſeveral Prebends, and both of them make but one Parſon. But where one is Parſon of the one moity of a church and another of the other moity as hath been ſaid, there one of them ſhall have a juris utrum againſt the other, and in the writ ſhall name him perſona medietatis Eccleſiæ, &c. But for avoyding of ſuſpition of curioſity if we ſhould proceed any further herein, we will attend what Littleton will further teach us.

(t) Britton fo.235. (u) Fleta lib.5.ca.19.

F.N.B. 49.o.

F.N.B. 49.p.

Sect. 11.

¶ Et nota que hõe ne poit aũ pluis ample ou pluis griender eſtate den-heritance, que fee ſimple.

And note that a man cannot have a more large or greater Eſtate of Inheritance than Fee ſimple.

¶ This doth extend as well to fee ſimples conditional and qualified, as to fee ſimples pure and abſolute. For our Author ſpeaketh here of the amplenes and greatnes of the eſtate, and not of the perduranblenes of the ſame.

And he that hath a fee ſimple conditional or qualified, hath as ample and great an eſtate as he that hath a fee ſimple abſolute, ſo as the diverſity appeareth between the quantity & quality of the eſtate.

From this ſtate in fee ſimple, Eſtates in taile, and all other particular Eſtates are derived, and therefore worthily our Author beginneth his firſt book with Tenant in fee ſimple, for à principalioribus ſeu dignioribus eſt inchoandum.

¶ *Ne poet aver pluis ample ou griender eſtate, &c.* For this cauſe two (a) fee ſimples abſolute cannot be of one, and the ſelf-ſame land. If the King make a gift in taile, and the Donee is attainted of Treaſon, in this caſe the King hath not two fee ſimples in him, viz. the ancient Reverſion in fee, and a fee ſimple determinable upon the dying without iſſue of Tenant in taile, but both of them are conſolidated and conjoyned together, and ſo it is if ſuch a Tenant in taile doth convey the land to the King, his heirs and Succeſſors, the King hath but one Eſtate in fee ſimple united in him, and the Kings Grant of one Eſtate is good, and ſo was it adjudged in the Court of Common Pleas. And yet in ſeveral perſons by act in law, a Reverſion may be in fee ſimple in one, and a fee ſimple determinable in another by matter Ex poſt facto; as if a gift in taile be made to a Villein, and the Lord enter, the Lord hath a fee ſimple qualified, and the Donor a Reverſion in fee, but if the Lord infeoffe the Donee, now both fee ſimples are united, and he hath but one fee ſimple in him: but one fee ſimple cannot depend upon another by the Grant of the party, as if lands be given to A. ſo long as B. hath heirs of his body the remainder over in fee, the remainder is void.

(a) Pl.Com.349.& 248. 19.H.8.Dyer 4. 29.H.8.Dyer 23. 16.Eliz.Dyer 330. 2.Marie Dyer 107. Auſtens caſe. Pa.38.Eliz.rot.108. In quan. imp. between the Queen Pl. and the Biſhop of Lincoln, Huſſey and others Deff. 15.E.4.6.8.

Sect. 12.

¶ Item purchaſe eſt appel la poſſeſſion de terres ou

Alſo purchaſe is called the poſſeſſion of lands or tene-

¶ Purchaſe in Latin is either acquiſitum of the Verb acquiro, for ſo I find it in the original Regiſter 234. In terris vel tenementis quæ viri

viri & mulieres conjunctim acquiſiverunt, &c. Bracton calleth it perquiſitum; and by (b) Glanvill it is called quæſtus or perquiſitum.

Bracton lib.2.fol.65.
(b) Glanvill lib.7.cap.1.
Britt.c.33.fo.84.& 121.

A purchaſe is alwayes intended by title, and moſt properly by ſome kind of conveyance either for money or ſome other conſideration, or freely of gift: for that is in law alſo a purchaſe. But a deſcent, becauſe it commeth meerly by act of law, is not ſaid to be a purchaſe, and accordingly the Makers of the Act of Parliament in 1. H. 5. ca. 5. ſpeaketh of them that have lands or tenements by purchaſe or deſcent of Inheritance. And ſo it is of an Eſcheat or the like, becauſe the Inheritance is caſt upon, or a title veſted in the Lord by act in law and not by his own deed or agreement, as our Author here ſaith. Like law of the ſtate of Tenant by the courteſie, Tenant in Dower or the like. But ſuch as attain to lands by meer injury and wrong, as by diſſeiſin, intruſion, abatement, uſurpation, &c. cannot be ſaid to come in by purchaſe, no more than Robbery, Burglary, Piracy or the like can juſtly be termed purchaſe.

Pl.Com.Wimbiſhes caſe 47.b.
1.H.5.ca.5.

If a Nobleman, Knight, Eſquire, &c. be buried in a church, and have his coat armor and Pennions with his arms, and ſuch other Enſigns of honour as belong to his degree or order ſet up in the church, or if a Grave-ſtone or Tomb be laid or made, &c. for a monument of him: (c) In this caſe albeit the freehold of the church be in the Parſon, and that theſe be annexed to the freehold, yet cannot the Parſon or any take them or deface them, but he is ſubject to an action to the heir, and his heirs in the honor and memory of whoſe Anceſtor they were ſet up. And ſo it was holden, Mich. 10. I. and herewith agreeth the Laws (d) in other countries. Note this kind of Inheritance: and ſome hold that the wife or Executors that firſt ſet them up may have an Action in that caſe againſt thoſe that deface them in their time. And note that in ſome places chattels as heir-loomes, (as the beſt bed, table, pot, pan, cart, and other dead chattels moveable) may go to the heir, and the heir in that caſe may have an Action for them at the common law, and ſhall not ſue for them in the Eccleſiaſtical court, but the heir-loome is due by cuſtome and not by the common law. And the (e) Ancient Jewels of the Crown are heir-loomes, and ſhall deſcend to the next ſucceſſor, and are not deviſable by Teſtament.

(c) 9.E.4.24.

Mich.10.Ja.Obiter in Com.banc.in Pyms caſe.
(d) B.Caſſanæus fol.13. Conc.29.
30.E.3.2.& 3.
39.E.3.6.9.10.
1.H.5.tit.Executors 108. tit.Deſcent Br.43.
9.F.4.15.Madam Wiches caſe.
(e) Vide 28.H.8.24.

An heir-loome is called principalium or hæreditarium.

Conſuetudo hundredi de Stretford in Com' Oxon eſt quod hæredes tenitorum infra hundredum prædictum exiſten poſt mortem anteceſſorum ſuorum habebunt, &c. principalium, Anglice an heir-loome, viz. De quodam genere catallor, utenſilium, &c. optimum plauſtrum, optimam carucam, optimum ciphum, &c.

Int.adjudicata coram Rege Tr.41.E.3. lib.2.fo.104. in Theſaur. Sect.241.242.&c.

Our Author hath not ſpoken of parceners in this chapter, for that he hath particular chapters of the ſame.

Gradus Parentelæ, &c.

Chap. 2. Sect. 13.

¶ *Tenant en fee taile.*

Tallium, or Feodum talliatum, is derived of the French word tailler, ſcindere, for ſo Littleton himſelf in this chapter Sect. 18. ſaith.

Mirror cap.2.ſect.15. & cap.1.ſect.5.

¶ *Le Statute de W.*2. This Statute was made in 13. E. 1. and is called Weſt.2. becauſe the Parliament was holden at Weſtminſter, and

TEnant en fee taile eſt per force de le ſtatute de Weſt.2.cap.1. Car devant ceſt dit ſtatute touts Enheritances fueront fee ſimple; car touts les dones q̄ ſont ſpecifies deins

TEnant in Fee Taile is by force of the ſtatute of *W.*2.*cap.*1. for before the ſaid ſtatute, all inheritāces were fee ſimple; for all the gifts which be ſpecified in that ſtatute were feeſimple

in eſtat,

ñr ſtat, fuer fee ſimple conditional al cõmon ley, cõe appiert p̃ rehearſal d̃ ñr ſtatute. Et oze p̃ cel ſtat tenãt en le taile eſt en deux mañs, ceſtaſcavoir, tenant in taile general, et tenant en taile ſpecial.

cõditional at the common law, as appeareth by the rehearſal of the ſame Statute. And now by this Statute, Tenant in Taile is in two manners, that is to ſay, Tenant in taile general, and Tenant in taile ſpecial.

hath the name of the ſecond, becauſe another Parliament was formerly holden at Weſtminſter in the third year of the ſame Kings raign, which was called Weſtminſter the firſt. And albeit many Parliaments were after holden at Weſtminſter beſides theſe, yet were they two only, propter excellentiam, called the Statutes of Weſtminſter. And the Act intended by Littleton, is W. 2. ca. 1. Upon which Statute our Author in the Inner Temple did learnedly read, whoſe reading I have. Of King Ed. 1. and of this ſtatute, Sir William Herle chief Juſtice of the Court of Common Pleas, in 5. E. 3. 14. ſaith, That King E. 1. was the wiſeſt King that ever was: and the cauſe of the making of this Statute, was to preſerve the Inheritance in the blood of them to whom the gift was made. And in 9. E. 3. 22. he ſaith, That they were ſage men that made this Statute. See more of this in the Chapter of Warranties, Sect. 746. 5. E. 3. 14. 9. E. 3. 22.

Of this eſtate Taile it is ſaid, (a) Modus legem dat donationi, & tenend' eſt etiam conventio, quia Modus & Conventio vincunt legem: Ut ſi alicui cum uxore fiat donatio, habendum & tenendum ſibi & hæredibus quos inter eos legitime procreabant, ecce quod donator vult tales hæredes in hæreditate paterna & materna ſuccedant, aliis hæredibus eorum remotioribus penitus excluſis: Et quod voluntas donatoris obſervari debet manifeſte apparet per hæc Statuta, quia autem dudum Regi durum videbatur, &c. (a) Fleta lib. 3. cap. 9. Bract. lib. 2. cap. 5. &c. Brit. ca. 24. & 36.

¶ *Devant le dit Statute* (b) *touts Inheritances fueront Fee ſimple.* Here Fee ſimple is taken in his large ſenſe, including as well conditional or qualified, as abſolute, to diſtinguiſh them from eſtates in Taile ſince the ſaid ſtatute. Before which ſtatute of Donis conditionalibus, If land had been given to a man, and to the heirs males of his body, the having of an Iſſue female had been no performance of the Condition, but if he had iſſue male, and died, and the iſſue male had inherited, yet he had not had a fee ſimple abſolute, (c) for if he had died without iſſue male, the Donor ſhould have entred as in his reverter. By having of iſſue, the Condition was performed for three purpoſes; firſt, to Alien ſecondly, to Forfeit: thirdly to charge with Rent, common, or the like. But the courſe of deſcent was not altered by having iſſue: for if the Donee had iſſue and died, and the land had deſcended to his iſſue (d) yet if that iſſue had died (without any alienation made) without iſſue, his collateral heire ſhould not have inherited, becauſe he was not within the form of the gift, viz. heire of the body of the donee. (f) Lands were given before the ſtatute in frank-marriage, and the Donees iſſue and died, and after, the iſſue died without iſſue, it was adjudged that his collateral iſſue ſhall not inherit, but the Donor ſhall re-enter. So note, that the heire in Taile had no fee ſimple abſolute at the Common law, though there were divers deſcents. (b) Vid. Sect. 18. Brit. ca. 36. fol. 93. Pl. Com. 235. 562. Shelleys Caſe lib. 1. fol. 103. (c) 44. E. 3. 2. 30. E. 1. Formedon 66. 7. E. 3. 6. 7. H. 4. 31. 12. H. 4. 2. (d) 18. E. 3. 6. 18. Aſſ. p. 5. 12. E. 4. 3. (f) 4. H. 3. Formdon 34. 18. Aſſ. 5. 12. E. 4. 3. Pl. Com. 247. b. 18. E. 2. tit. Formdon 58. 59.

If lands had been given to a man and to his heirs males of his body, and he had iſſue two ſons, and the eldeſt had iſſue a Daughter, the Daughter was not inheritable to the fee ſimple, but the younger ſon per formam Doni. And ſo if land had been given at the common law to a man and the heires females of his body, and he had iſſue a ſon and a daughter, and died, the Daughter ſhould have inherited this fee ſimple at the common Law, for the ſtatute of Donis Conditionalibus createth no eſtate taile, but of ſuch an eſtate as was fee ſimple at the common law and is deſcendable in ſuch form as it was at the common law. If Donee in taile had iſſue before the ſtatute, and the iſſue had died without iſſue, the alienation of the Donee at the common law, having no iſſue at that time had not barred the Donor.

(g) If donee in taile at the common law has aliened before any iſſue had, and after had iſſue, this alienation had barred the iſſue, becauſe he claimed a Fee ſimple, yet if that iſſue died without iſſue, the Donor might re-enter for that he aliened before any iſſue, at what time he had no power to alien to bar the poſſibility of the Donor. (h) But feme tenant in taile had taken husband, and had iſſue, and the husband and wife had aliened in Fee by Deed before the ſtatute, yet the iſſue might have had a Formdon in diſcender, for the alienation was not lawful: but otherwiſe it is, if it had been by fine. And theſe things though they ſeem ancient are neceſſary notwithſtanding to be known, aſwel for the knowledge of the common law, as for Annuities and ſuch like inheritances as cannot be intailed within the ſaid ſtatute, and therefore remain at the common law. (i) If the King before the ſtatute of Donis con- (g) 30. E. 1. Formdon 65. Temps E. 1. ibidem 62. 19. E. 2. formdon. 61. Pl. Com. 246. (h) 4. E. 2. Formdon 50. (i) 6. E. 3. 5. Jo. of Elthams caſe.

conditionalibus had made a gift to a man, and to the heires of his body begotten, the Donee Post prolem ſuſcitatam, might have aliened aſwel as in the caſe of a common perſon. (k) But if the Donee had no iſſue, and before the Statute had aliened with warrantie, and died, and the warrantie had deſcended upon the King, this ſhould not have bound the King of his Reverſion without aſſets: but otherwiſe it was in the caſe of a common perſon. (l) Of the other ſide, if lands had been given to the King and to the heirs of his bodie, he could not before iſſue had aliened in fee, but only to have barred his Iſſue as a common perſon might have done, but not to have barred the Reverſion, for that ſhould have been a wrong in the caſe of a Subject, and the Kings Prerogative cannot alter his caſe, nor make it greater, than the Donor gave unto him: And it is a maxim in law, That the King can do no wrong. When all Eſtates were Fee ſimple, then were purchaſers ſure of their purchaſes, Farmors of their Leaſes, creditors of their debts, the King and Lords had their Eſcheats, Forfeitures, wardſhips, and other profits of their Seigniories: and for theſe and other like caſes, by the wiſdom of the common Law all eſtates of inheritance were Fee ſimple, and what contentions and miſchiefs have crept into the quiet of the Law by theſe lettered inheritances, daily experience teacheth us. But ſee more of this matter in the aforeſaid chapter of warrantie, Sect. 746.

(k) 45. Aſſ. p. 6.

(l) Pl. Com. 246. b.

Lib. 10. f. 38. in Port. caſe.

¶ *Common ley.* See for explication hereof, Sect. 170.

¶ *Come appiert per le reherſal de meſme leſtatute.* Here, by the authority of our Author, The rehearſal or preamble of a ſtatute is to be taken for truth, for it cannot be thought that a Statute that is made by authority of the whole Realm, as well of the King, as of the Lords Spiritual and Temporal, and of all the Commons, will recite a thing againſt the truth.

Doct. & Stud. lib. 2. ca. 55

¶ *Et ore per cel ſtatute en taile eſt en 2. Manners, ſ tenant en tayle general, & tenant in tayle eſpeciall.*

This diviſion of an eſtate taile is perfect and ſound, For the membra dividentia, viz. general and ſpecial are converted properly with the thing divided, and they are proved by many authorities of law, and approved of all learned men, and ſo are all the diviſions through all his three books, which the ſtudious and diligent Reader will obſerve. And how excellent and difficult a thing it is to divide rightly and properly, eſpecially in the law, the learned do know.

By this ſtatute the land is as it were appropriated to the Tenant in taile, and to the heirs of his body, and therefore (r) if an eſtate be made, either before or ſince the Statute of 27. H. 8. cap. 10. to a man and the heirs of his body, either to the uſe of another and his heirs, or to the uſe of himſelf and his heirs, this limitation of uſe is utterly void. For before the ſaid Statute of 27. H. 8. he could not have executed the eſtate to the uſe, and ſo was it adjudged (ſ) in an Ejectione firmæ, between John Cowper Plaintiff, and Thomas Franklin, &c. Defendant.

(r) 24. H. 8. tit. feoffments al uſes. 4. 27. H. 8. fo.

(ſ) Paſc. h. 14. Ja. in the Kings Bench.

Sect. 14, 15.

¶ *Terres*, Terra, in his general legal ſignification (as hath been ſaid before) includeth not only all kinde of grounds, as meadow, paſture, wood, &c. but houſes and all edifices whatſoever. In a more reſtrained ſenſe it is taken for arable ground.

Vid. Sect. 1.

¶ *Tenements*, tenementa. This is the only word which the ſaid Statute of W. 2. that created Eſtates taile, uſeth, and it includeth not only all corporate Inheritances, which are or may be holden, but alſo all Inheritances iſſuing out of any of

¶ Tenãt en taile generall, eſt lou treſpaſſ ou tenemẽts ſont donez a un hõe & a ſes heires de ſon corps engendrez: En ceo caſe eſt dit generall taile, pur ceo q̃ quelcunq; feme q̃ tiel tenant eſpouſa (il avoit pluſors femes, & per chaſcũ de eux il ad iſſue) uncore chaſcun de les iſſues

TEnant in tail general, is where Lands or Tenements are given to a man, & to his heires of his body begotten. In this caſe it is ſaid general tail, becauſe whatſoever woman that ſuch tenant taketh to wife (if he hath many wives and by every of them hath iſſue) yet every one of theſe iſſues by poſ-

per poſſibilitie poit enheriter leg tenements per force del done, pur ceo que chelcun tiel iſſue eſt de ſ coꝛpꝰ engendꝛe.

poſſibilitie may inherit the Tenements by force of the gift; becauſe that every ſuch iſſue is of his bodie ingendred.

¶ En mꝭ le maner eſt lou terres ou tenements ſont doneꝰ a un feme, & a ſ heires de ſa coꝛpꝰ iſſuants, coment que el avoit diverꝰ barons, uncoꝛe iſſue que el poet aver per chelcun baron, poit enheriter come iſſue en le taile per force de tiel done, & pur ceo tielꝛ doneꝰ ſont appelles general tailes.

IN the ſame manner it is where lands & Tenements are given to a woman, & to the heirs of her bodie, albeit that ſhe hath divers husbands, yet the iſſue which ſhe may have by every Husband may inherit as iſſue in taile by force of this gift. And therefore ſuch gifts are called general tailes.

ſeeing that a man hath a freehold, Liberum tenementum in it, by ſd.

The Office of the keeping of the church of our Lady of Lincolne, was intailed, and a Formedon there brought upon that gift of the Office by the iſſue in taile. The (x) Office of the Marſhal of England intailed. The(y) Office of one of the Chamberlains of the Exchequer intailed. 1.H.7.28. The Office of a Foſterſhip intailed. 4.H.7.10.9.E.4.56. b. Charters intailed. 19.H.8.3. Uſe intailed. (z) Nomination to a benefice intailed.

Alſo a name of dignity may be intailed within the ſtatute, (a) as Dukes, Marqueſſes, Earles, Viſcounts and Barons, becauſe they be named of ſome County, Manno, Town, oꝛ place. If the iſſue in taile (b) in a Formedon in the deſcender be barred by a falſe verdict, his releaſe is no bar to his iſſue, albeit the action is at the common Law.

The like law is of a writ of Errour. 3. Eliz. Dier 188. If a gift in taile be made with warrantie, the Donee releaſes the warrantie, this ſhall not bind the iſſue in taile, foꝛ to all theſe caſes and the like this ſtatute doth extend. But if I grant to a man, and to the heirs of his body to be Keeper of my Hounds, oꝛ Maſter of my Hoꝛſe, oꝛ to be my Faulconer, oꝛ ſuch like with a fee therefoꝛe, yet theſe cannot be intailed within the ſaid ſtatute, foꝛ that they be not iſſuing out of Tenements noꝛ annexed to, oꝛ exerciſible within, oꝛ concerning lands oꝛ tenements of Freehold oꝛ Inheritance, but concerning chattels, and ſavour nothing of the realtie, And ſo it is if I by my deed foꝛ me and my heirs grant an annuitie to a man, and the heirs of his body, foꝛ that this only chargeth my perſon and concerneth no land, noꝛ ſavoureth of the realtie.

In all theſe caſes he hath a fee conditional, as they were befoꝛe the ſtatute, and the grantee by his grant oꝛ releaſe may bar his heir, as he might have done at the common Law, foꝛ that in theſe caſes he is not reſtrained by the ſaid ſtatute.

¶ *Et a ſes heires de ſon corps engendres.* In gifts in taile theſe woꝛds (heires) are as neceſſary, as in Feoffments and Grants; foꝛ ſeeing every eſtate taile was a fee ſimple at the common Law, and at the common Law no fee ſimple could be in Feoffments and Grants without theſe woꝛds (heires) and that an eſtate in Fee taile is but a cut oꝛ reſtrained Fee, It followeth that in gifts in a mans life time, no Eſtate can be created without theſe woꝛds (heirs) unleſs it be in caſe of Frankmarriage, as hereafter ſhall be ſhewed. And where Littleton ſaith (heirs) yet (heir) in the ſingular number in a ſpecial caſe

those inheritances, oꝛ concerning oꝛ annexed to, oꝛ exerciſible within the ſame, though they lie not in tenure, therefoꝛe all theſe without queſtion may be intailed. As (t) Rents, eſtoꝛers, commons oꝛ other profits whatſoever granted out of land; Oꝛ Uſes, Offices Dignities which concern lands oꝛ certain places may be intailed within the ſaid ſtatute, becauſe all theſe ſavour of the Realtie. But if the grant be of an Inheritance meer perſonal oꝛ to be exerciſed about chattels, and is not iſſuing out of land, oꝛ concerning any land, oꝛ ſome certain place, ſuch Inheritances cannot be intailed; becauſe they ſavour nothing of the realtie. But examples will illuſtrate and make this learning clear.

The writ of Aſſiſe(u) was De libero tenemento, and upon his pleint of the Office of the fourth part of the Serjant of the common Place, and the writ adjudged good, and conſequent it may be intailed.

(t) 7.E.3.363. 18.E.3.27. 7.H.6.32. H.8.28.5.E.4 3.1.H.7.28.4.H.7.9. 1.H.5.1.H.8.fol.3. Nevils caſe lib.fol.33.34. Pl.Com. in Manxels caſe fol. 2.& 3.

(u) 7.Aſſ.p.12.7.E.6.1.

18. E.3.27.
(x) 5.E.4.3.10.E.4.16.
(y) 11.E.4.1.
1.H.7.28.
4.H.7.10.9.E.4.526.
19.H.8.3.1.H.5.1.
(a) Lib.7.fol.33.34. Nevils caſe.
28.H.6. Lord Veſeys caſe.
(b) 14.Aſſ.2.
3.Eliz.Dyer 188.

Pl.Com. in Manxels caſe.

39.Ass.20, 20.H.35.5.H.4.7.b. 14. H.4.15. case may create an Estate taile, as it appeareth by 39. Ass. p. 20. hereafter mentioned. And yet if a man give lands to A. & hæredibus de corpore suo, the remainder to B. in forma prædicta, this is a good Estate taile to B. for that in forma prædicta do include the other. If a man letteth lands to A. for life, the remainder to B. in taile, the remainder to C. in forma prædicta, this remainder is void for the incertainty. But if the remainder had been, the remainder to C. in eadem forma this had been a good Estate taile, for Idem semper antecedenti proximo refertur. If a man give lands or tenements to a man & semini suo, or exitibus vel prolibus de corpore suo, to a man and to his seed, or to the issues or children of his body, he hath but an estate for life, for albeit that the statute provideth that Voluntas donatoris secundum formam in charta doni sui manifestè expressam de cætero observetur, Yet that will and intent must agree with the rules of law. And of this opinion was our Author himself, as it appeared in his learned reading aforementioned upon this Statute: wherein he holdeth if a man giveth land to a man Et exitibus de corpore suo legitimis procreatis, or semini suo, hath but an estate for life, for that there wanteth words of Inheritance.

Vid. Shelleys case lib.1.f.

¶ *De son corps.* These words are not so strictly required but that they may be expressed by words that amount to as much: for the example that the statute of W. 2. putteth hath not these words (de corpore) but these words (hæredibus) viz. Cum aliquis dat terram suam alicui viro & ejus uxori & hæredibus de ipsis viro & muliere procreatis. If lands be given (c) to B. & hæredibus quos idem B. de prima uxore suo legitime procrearet. This is a good estate in especiat taile (albeit he hath no wife at that time) without these words (de corpore.) So it is (d). if lands be given to a man, and to his heirs which he shall beget of his wife: (e) or to a man & hæredibus de carne sua, or to a man & heredibus de se. In all these cases these be good estates in taile, and yet these words de corpore are omitted.

(c)E.3.tit.breve.743. 3.E.3.tit.Estates. (d)12.H.4.3. (e)37.H.6.15. (f) 5.H.5.6.

(g)12.H.4.2.per Horton. It is holden (g) by some opinion, that if there be grandfather, father and son, and lands are given to the grandfather, and to his heires begotten by the father, the father dyeth, the grandfather dieth, the son is in as heir to the grandfather begotten upon the body of his father, and the wife of the grandfather in that case shall be endowed. But certain it is, that in some case one shall have the land per formam doni that is not issue of the body of the Donee, which see Section 30.

Engendres. This word may in many cases be omitted or expressed by the like, and yet the estate in taile is good: as, Hæredibus de carne, hæredibus de se, hæred' quos sibi contigerit, &c. as is aforesaid; and where the word of Littleton is, ingendred, or begotten, procreatis, yet if the word be procreandis, or quos procreaverit, the estate in taile is good; and as procreatis shall extend to the issues begotten afterwards, so procreandis shall extend to the issues begotten before.

28.E.3.tit.Bre.838. 24.E.3.28.

Sect. 16.

¶ *Un home & sa feme*(a) Then put the case that lands be given to a man and a woman unmarried, and the heirs of their two bodies: for the apparant possibilitie to marry, they have an estate taile in them presently. (b) So it is where lands be given to the husband of A. and to the wife of B. and to the heirs of their bodies, they have presently an estate in taile, in respect of the possibilitie. If a feme sole do enfeoffe a married man causâ matrimonii prælocuti, it is good for the possibility. But put the case that the premises and the habendum be in other manner than Littleton hath put, and let us see

(a)H.7.10.11.E.3. Formdon 30.Pl.Com.35

(b) Lib.1.fo. 120. Chudleys case.40.Ass.pl.13.34 Ass.Pl.1.Fleta lib.5.c.34

TEnant en Taile especiale ẽ lour lis ou Tenements sont dones a un home & a sa feme, & a les heirs de lour deux corps engendres, en tiel case nul poet inherit p force de le dit done, forsq̃ ceux q̃ sont ingendres perenti eux deux. Et est appelle special Taile, pur ceo q̃ si la feme devy, & il prent aut fẽ, et ad issue, lissue del se,

TEnant in tail special is where Lands or Tenements are given to a man & to his wife, and to the heirs of their two bodies begotten; in this case none shall inherit by force of this gift, but those that be engendred between thẽ two. And it is called especial taile, because if the wife die, and he taketh another wife, and have issue, the issue

cond

cond feme ne ſerra jammes inheritable p force d tiel done, ne auxy iſſue del ſecond Baron, ſi le prim Baron debie.

ſue of the ſecond wife ſhall not inherit by force of this gift, nor alſo the iſſue of the ſecond husband, if the firſt husband die.

what the Law is in theſe caſes. (e) As if a man in the premiſſes give lands to another and the heirs of his body, habendum to him and his heirs for ever: It hath been holden that in this caſe he hath an eſtate taile, and a fee ſimple expectant: And ſo (it is ſaid) via verſa, if lands be given to a man and to his heirs in the premiſſes, habendum to him and to the heirs of his body, that he hath an eſtate taile, and a fee ſimple expectant. But vid. lib. 8. fo. 154. b. otherwiſe reſolved, ut patet ibi. (d) If lands be given to B. and his heirs, to have and to hold to B. and his heirs; if B. have heirs of his body, and if he dy without heirs of his body, that it ſhall revert to the Donor, this is adjudged an eſtate tail, and the Reverſion in the Donor. (e) For Voluntas donatoris in charta doni ſui manifeſtè expreſſa obſervetur, and therefore in the caſe next precedent; if theſe or the like words be added (and if he dy without heirs of his body, that the lands ſhall revert to the Donor) that then the habendum ſhall by Authority of divers books be conſtrued upon the whole deed, to be a limitation or a declaration, what heirs are meant in the premiſſes, to inherit, and that in that caſe the Reverſion is in the Donor.

(c) 21.H.6.7.

(d) 30.Aſſ.p.47. 35.Aſſ.p.14.37.Aſſ.15. 5.H.5.6.

(e) W.2.ca.21.

(f) If a man make a Charter of feoffment of an acre of land to A. and his heirs, and another deed of the ſame acre to A. and the heirs of his body, and deliver ſeiſin according to the form and effect of both deeds, in this caſe he cannot take a fee ſimple onely, as ſome hold, for that livery was made according to the deed in tail, as well as to the charter in fee, neither can the livery enure only to the deed of eſtate taile with a fee ſimple expectant, for that livery was made as well upon the deed in fee ſimple, as the deed in taile. Therefore others hold, That in that caſe it ſhall enure by moyties, that is, to have an eſtate taile in the one moity, with the Fee ſimple expectant, and a fee ſimple in the other moity: And ſo the livery ſhall work immediately upon both deeds.

(f) 2.H.6.25.45.E.3.26.

Sect. 17.

Et meſme le maner eſt lou tenements ſont dones p un home a un auter ove un feme, que eſt la file ou couſin al donour en frankmariage, & quel doñ ad un enheritance per ceux parolx (frankmariage) a ceo annexe, coment que ne ſoit expreſſement dit, ou reherce en le done, ceſta ſcavoir, que les donees averont les tenemẽts a eux & a lour heires yenter eux deux engendres. Et ceo eſt dit eſpecial taile, pur ceo que iſſue del ſe-

IN the ſame manner it is, where tenements are given by one man to another, with a wife (which is the daughter or couſin to the giver) in frãkmariage, the which gift hath an inheritance by theſe words (frankmariage) annexed unto it, although it be not expreſſly ſaid or rehearſed in the gift (that is to ſay) that the donees ſhall have the tenements to them and to their heirs between them two begotten. And this is called eſpecial taile, becauſe

A *Un home ove un feme.* Albeit the gift is made of the lands to the man with his daughter, &c. yet is the gift good to them both in ſpecial taile, and therefore that of Stephan de la More in (g) 5. E. 3. is very remarkeable, where the caſe was, that Robert gave the reverſion of lands which Agnes his wife did hold for her life to Stephen de la More, Habendum poſt mortem dictæ Agnetis in liberum maritagium cum Johanna filia ejuſdem Roberti, and it is adjudged that it is a good eſtate taile: wherein three things are to be obſerved: Firſt, that Joan the daughter took with her husband an eſtate in ſpecial taile, albeit ſhe were named but under a cum viz. cum Johanna, &c. 2. That that cum doth come after the habendum, for that it is but all one ſentence, 3. That theſe words, in liberum maritagium, do create an eſtate of inheritance in ſpecial taile, as Littleton

Vid. Sect. 19. 20.

5.E.3.17.

(g) This caſe is vouched in Pl. Com. 158. to be in 4. E. 3. which being not found in that year it is there ſo left without any further reference, but you ſhall find it as above ſaid in 5.E.3.17.

tleton ſaith, Le donec ad un inheritance per reaſon de ceux parolx (frankmarriage) a ceo annexe, coment que ne ſoit expreſſement dit, &c. But this had need of ſome interpretation, for if lands be given by theſe words (in frankmarriage) according to the Rules of Law, then do theſe words create an Eſtate of Inheritance in ſpecial taile: for the conſideration of marriage is in that caſe more favoured in Law than any other conſideration: But though the gift be in theſe words, yet if it be not conſonant to the Rules of Law in other things requiſite thereunto, there they create but an Eſtate for life. And therefore to ſpeak once for all, Four things be incident to a frankmarriage. First, that it be given for conſideration of marriage either to a man with a woman, or, as ſome have held, to a woman with a man: For in (h) 6.E.3.33. in Peirs de Saltmarſh his caſe, a man gave land to his ſon in Frankmarriage, and Fitz. N. B. 172. taketh the Law ſo alſo. And 7. E. 4. 12. per Moyle againſt a new opinion in temps H. 8. Br. tit. Frankmarriage the former books being not remembred. Secondly, that the woman or man that is the cauſe of the gift (i) be of the blood of the Donor, but it may be made aſwell after marriage as before, and it may be made with a widow &c. Thirdly, if the gift be made of ſuch a thing as lieth in tenure, that the Donees hold of the Donor at the time of the eſtate in frankmarriage made. A Rent ſervice (k) may be given in Frankmarriage becauſe it may be holden. And ſo may a Rent charge or Rent ſecke, as Fitz N. B. holdeth, and it appeareth in our books that a Common was granted in Frankmarriage. Fourthly, that the Donees ſhall hold freely, of the Donor till the fourth degree be paſt. And therefore if land be given to a woman, with a ſon of the Donor in Frankmarriage, there paſſeth an Inheritance; but if the Donee that is the cauſe of the gift be not of the blood of the Donor, then there paſſeth but an Eſtate for life if livery be made. Alſo if (l) lands be given to a man with a woman of the blood of the Donor in liberum maritagium the remainder in fee either to a ſtranger or to the Donees, they have no eſtate taile, becauſe there is no tenure of the Donor, but if (m) in that caſe, the remainder had been limited to another in taile, reſerving the Reverſion in fee to the Donor, there the ſaid words (in liberum maritagium) create an Inheritance, becauſe the Donees hold of the Donor. And this is the cauſe that it is holden, That a man cannot deviſe land in Frankmarriage becauſe the Donee cannot hold of the Donor. And Ceſty que uſe before the ſtatute of 27. H. 8. could not have made a gift in Frankmarriage, becauſe the Reverſion was in the Feoffees. (n) And if the Donor doth give lands in liberum maritagium reſerving a Rent, this reſervation ſhall take no effect till the fourth degree be paſt, but the Frankmarriage is good, for if the reſervation ſhould be good, than could not the Donees have an Eſtate taile for want of words of the heirs of their bodies.

cond feme ne poit inheriter, &c. the iſſue of the ſecond wife may not inherit.

W. 2. cap. 1.
19.E.3.tit.taile 1.

(h) 6.E.3.33.
Fitz.N.B.172.
7.E.4.12.
15.E.2. Cui in vita. Sect. 24.

(i) 4.E.3.8.
31.E.1.taile 30.
Bracton.lib.2.cap.7.

(k)22.R.2.tit.diſcent.50
Fitz. N. B. 212.
9.H.6.35.b.
W.2.ca.1.acc.

(l) Temps H.8.Br.frankmar.11. 13.E.1.formdon 63.
Vid.32.E.1.tail.25.
2.E.2.Feoffment & faitz.9.
27.E.3.5.2.45.E.3.20.

(m)20.E.2.aid 174.
31.E.3.Gard.216.

(n) Bract.lib.2.cap.7.
32.E.1.taile.31.
13.H.4.7.4.H.6.17.
26.Aſſ,66.31.E.3.gar.29

¶ *En Frankmarriage.* Liberum maritagium, Free marriage; Maritagium is taken for Fee taile, and divideth maritagium into liberum & ſervitio obligatum: and herewith agreeth Bracton (o) lib. 2. cap. 34. & 39. Maritagium eſt aut liberum aut ſervitio obligatum, & lib. 2. cap. 7. nu. 3. & 4. liberum maritagium dicitur, ubi donator vult quod terra ſic data quieta ſit & libera ab omni ſeculari ſervitio. And ſo, before Bracton, ſaid Glanvill. lib. 7. cap. 18. Maritagium autem aliud nominatur liberum aliud ſervitio obnoxium; liberum dicitur maritagium quando aliquis liber homo aliquam partem terræ ſuæ dat cum aliqua muliere in maritagium, ita quod ab omni ſervitio terra illa ſit quieta, &c. And after both of them Fleta that followeth them both, lib. 3. cap. 1. ſaith, Eſt autem quoddam maritagium liberum ab omni ſervitio ſolutum donatori vel ejus hæredi, &c. Et eſt ſimiliter maritagium ſervitio obligatum & oneratum, &c. And theſe words (in liberum maritagium) are ſuch words of Art, and ſo neceſſarily required, as they cannot be expreſſed by words equipollent, or amounting to as much. As if a man give lands to a man with his Daughter in connubio ſoluto ab omni ſervitio, &c. Yet there paſſeth in this caſe but an Eſtate for life, for ſeeing that theſe words (in liberum maritagium) create an Eſtate of Inheritance againſt the general Rule of law, the law requireth that they ſhould be legally purſued. But then it may be demanded if a man had given lands at the Common law, in libero maritagio, whether had the Donees a fee ſimple without theſe words (heirs) for that it appeareth by that which hath been ſaid before, that all gifts in taile were fee ſimple at the Common law, and that the ſtatute of W. 2. did not create any Eſtate in fee taile, but out of an Eſtate in fee ſimple. To this it is anſwered that theſe words (in liberum maritagium) did create an Eſtate in fee ſimple at the Common law: and it is holden in 31. E. 3. gard. 176. Per ceux parolx in frankmarriage les donees averont les terres a eux et a lour heires par enter eux engendres, et ceo eſt dit eſpecial taile. But yet between Donees in Frankmarriage and other Donees in ſpecial taile there be many notable diverſities. If the King give land to a man and a woman, and the heirs of their two bodies, and the woman die without Iſſue, yet ſhall the man be tenant in taile apres poſſibility. But if the King give land to a man with a woman of his kindred in a frankmarriage, and the woman dieth without iſſue, the man in the Kings caſe ſhall not hold it for his life, becauſe the woman was the cauſe of the gift, but otherwiſe

26.Aſſ.p.66.per Wilbye.

(o) Bract.lib.2.ca.34.& 39.& lib.2.ca.7.nu.3. & 4.
Glanvill.lib.7.ca.1.& ca.18.

Fleta.lib.3.ca.1.

30.E.1.tit.Formdon.66. adjudg acc.

31.E.3.tit.Gard.116.
Mirr.cap.2.Sect.15.acc.

7.H.3.Dower.202.

wiſe it is in the caſe of a common perſon. If lands be given to a man and a woman in eſpecial taile and they are divorced cauſa præcontractus, both ſhall hold the lands for their lives; But in (p) caſe of frankmarriage if they be ſo divorced, the woman ſhall enjoy the whole land, becauſe ſhe was the cauſe of the gift. If lands holden in Socage (q) be given in eſpecial taile, and the Donees dy the iſſue being within the age of 14. years, (r) the next of kin of the part of the Father or part of the Mother which can hap the cuſtody ſhall have it; but in caſe of frankmarriage the heir of the part of the Mother ſhall have it, becauſe as it hath been ſaid ſhe was the cauſe of the gift.

7.H.4.16.

(p) 13.E.3.tit.Aſſ. 19.E.3.Aſſ.83. 12.Aſſ.22. 19.Aſſ.2. 8.E.Aſſ.45.

(q) Pl.Com.Carrils caſe.

(r) 17.H.3.tit.Gard.146. 27.E.3.79.

Sect. 18.

¶ ET nota, quod hoc verbū (Talliare) idem eſt quod ad quandam certitudinem ponere, vel ad quoddam certum hæreditamentum limitare. Et p̄ t̄ q̄ē limit æ mis en certaine, quel iſſue inheritera per force de tiels dones, & come longement lenheritance endurera, il eſt appelr̄ ē Latine, feodū talliatū, i. hæreditas in quandam certitudinē limitata, Car ſi tenant in general taile moruſt ſans iſſue, & donor ou ſes heirs poiēt entrer cōe en lour reverſion.

AND note that this word (*Talliare*) is the ſame, as to ſet to ſome certainty, or to limit to ſome certain inheritance. And for that it is limited and put in certain, what iſſue ſhall inherit by force of ſuch gifts, and how long the Inheritance ſhall indure, it is called in Latine, *feodum talliatum, i. hæreditas in quandam certitudinem limitata.* For if tenant in general taile dieth without iſſue, the Donor or his heirs may enter as in their reverſion.

¶ *ET nota.* This, in our Author throughout his three books, betokens ſome notable point of inſtruction worthy of more ſpecial obſervation, which is often (ſ) uſed by him as you may perceive by the Sections noted in the Margent.

(ſ) Sect.18.37.42.43.49. 50.64.72.89.90.104.108 114.116.147.158.161. 168.170.183.254.279. 346.387.432.467.618. 619.637.642.670.682. 684.711.717.719.738.

¶ *Feodum talliatum*, i. *hæreditas in quandam certitudinem limitata.* Here our Author doth interpret what Feodum talliatū is. Of all the eſtates taile moſt coarcted or reſtrained that I find in our books, is the eſtate taile in 39. Aſſ. Pl. 20. where lands were given to a man and to his wife and to one heir of their bodies lawfully begotten, and to one heir of the body of that heir only; This caſe being adjudged in the point is an exception (ſome ſay) out of the general rule put before by Littleton. Sect. 13. that all eſtates taile were fee ſimple at the common law, for (ſay they) by this limitation (hæredi) in the ſingular number the Donees had not had a fee ſimple at the common law. Vide regiſtrum judiciale, fol. 6. a gift made to a man, & hæredi maſculo de corpore ſuo.

Weſt.2.cap.3. Pl.Com.251.a.

39.Aſſ.pl.20.

Sect.13. Vid.Pl.com.fo.29.b.

Regiſt. Judic. fo.6.

Sect. 19.

¶ EN meſm̄ r maner eſt del tenant en ſpecial tail, &c. Car en cheſcun done en r taile ſauns pluis ouſter dire, le reverſion del fee ſimple eſt en le donor. Et les donees &

IN the ſame manner it is of the tenant in eſpecial taile, &c. For in every gift in tail without more ſaying, the reverſion of the fee ſimple is in the donor. And the Donees and

¶ *EN cheſcun done en tail ſans pluis ouſter dire, le reverſion del fee ſimple eſt en le donor.* This is wrought by the conſtruction of the ſtatute of W. 2. cap. 1. which hath turned the fee ſimple of the Donee into a particular eſtate of inheritance, and the poſſibility of the Donor to a reverſion in him expectant upon the eſtate tail.

so as there be two inheritances of one land, yet this was doubted in our books (t) and there resolved according to Littleton. But I see no cause wherefore that point should be drawn in question, for at the same Session of Parliament (in which the statute de donis conditionalibus was made) viz. ca. 3. it is expressly said, vel per donum in quo reservatur reversio, so as by the judgement of the same Parliament a reversion was setled in the Donor.

(t) 12.E.4.23.5.H.7.14. (West.2.ca.13.Pl.Com. 247.248.251.562.2.E.2. tit. refecit.147. 33.H.6.27.39.E.3.18. 45.E.3.20.

¶ *Le reversion del fee simple est en le donor.* A reversion is where the residue of the estate allwayes doth continue in him that made the particular estate, or where the particular estate is derived out of his estate, as here in the case of Littl. Tenant in Fee simple, maketh gift in tail, so it is of a Lease for life, or for years. If a man extend Lands by force of a statute Merchant, Staple, recognizance or Elegit, he leaveth a reversion in the Conusor. But since Littleton wrote, the description must be more large upon the statute of (a) 27. H. 8. For at this day, if a man seised of lands in fee make a Feoffment in fee, (and depart with his whole estate) and limit the use to his Daughter for life, and after her decease, to the use of his Son, in tail, and after to the use of the right heirs of the Feoffor: In this case, albeit he departed with the whole fee simple by the feoffment, and limited no use to himself, yet hath he a reversion, (b) for whensoever the Ancestor takes an estate for life, and after a limitation is made to his right heirs, the right heirs shall not be purchasors. And here in this case when the limitation is to his right heirs, and right heir he cannot have during his life (for, non est hæres viventis) the Law doth create an use in him during his life, until the future use commeth in esse, and consequently the right heirs cannot be purchasors, and no diversity when the Law creates the estate for life, and when the party. And all this was adjudged between (c) Fenwick and Mitford in the Kings bench, and if the limitation had been to the use of himself for life, and after to the use of another in tail, and after to the use of his own right heirs, the reversion of the fee had been in him, because the use of the fee continued ever in him: and the statute doth execute the possession to the use in the same plight, quality, and degree, as the use was limited.

(a) 27.H.8.ca.10.

(b)38.E.3.26.27.E.3.age 218.24.E.3.36.40.E.3.

(c)Tr.31.Eliz.inter Fenwick & Mitford. 32.H.8.gard.93. 28.H.8.Dier.8.9.10.&c. Buckenhams case. 5.Marie.Dier.163.

(d) If a man make a gift in tail, or a lease for life, the remainder to his own right heirs, this remainder is void, and he hath the reversion in him, for the Ancestor during his life, beareth in his body (in judgment of law) all his heirs, and therefore it is truly said, that Hæres est pars antecessoris. And this appeareth in a common case, that if land be given to a man and his heirs, all his heirs are so totally in him, as he may give the lands to whom he will.

(d) 1.H.5.8.4.H.6.20. 9.Eliz.Dier.Bromleys case.

(e) So it is if a man be seised of lands in Fee, and by indenture make a lease for life, the remainder to the heirs male of his own body, this is a void remainder: for the Donor cannot make his own right heir a purchaser of an estate tail, without departing of the whole Fee simple out of him: as if a man make a feoffment in fee to the use of himself for life, and then to the use of the heirs male of his body, this is a good estate tail executed in himself, and the limitation is good by way of use, because it is raised out of the state of the Feoffees, which the Feoffor departed with, and that is apparant, for a limitation of use to himself had without question been good.

(e) Dier.5.Marie 156. Graswolds case adjudge. Benlowes Serjant in his report agreeth.

(f) If a man make a feoffment in fee to the use of himself in tayle, and after to the use of the Feoffee in fee, the Feoffee hath no reversion, but in nature of a remainder, albeit the Feoffor have the estate tail executed in him by the statute, and the Feoffee is by the Common Law, which is worthy of observation.

(f) 20.Eliz.Dier.

To

lour issues ferront al donor & a ses heires autiels services, come le donor fait a son Seignior prochein a luy Paramount, forspris les donees in frankmarriage, les queux tiendront quietment de chescun manner de service, sinon que soit per fealtie tanque le quart degree soit passe, & apres ceo que le quart degree soit passe lissue de le cinq degree, & issint ouster lauters des issues apres luy, tiendront del don on ses heirs come ils teignōt ouster, cōe il e avāt dit

their issue shall do to the Donor, and to his heirs the like services, as the Donor doth to his Lord next Paramont, except the Donees in frankmarriage who shall hold quietly from all manner of services (unless it be for fealty) until the fourth degree is past, and after the fourth degree is past the issue in the fifth degree, and so forth the other issues after him, shall hold of the Donor, or of his Heirs, as they hold over, as before is said.

To conclude this point (g) whosoever is seised of land, hath not only the Estate of the land in him, but the right to take profits which is in nature of the use, and therefore when he makes a Feoffment in Fee without valuable consideration to divers particular uses, so much of the use, as he disposeth not, is in him as his ancient use in point of reverter. As if a man be seised of two Acres, the one holden by Knights service, by priority, and the other by Knights service holden by posteriority, and maketh a feoffment in fee of both Acres to the use of himself and his heirs, the old use continued in him, and the priority and posteriority remain. So it is of lands or part of the mother, the use shall go to the heir of the part of the Mother, which could not be, if it were not the old use, but a thing newly created: the like law of lands, of the custome of Borough-english, Gavelkind, &c.

(g) 13. H.7.6. 28.H.8.Dier 12. 5.E.4.7. Lib.1.76.84.85.100.&c. Chudley. Lib.2.56.57.58.77.78. Lib.4.22.Lib.6.34.43.

¶ *Les dones, & lour issues ferront al donor & a ses heirs autiels services come le donor fait a son seignior procheine a luy paramount.* The reason of this is, that when by construction of the said statute, there was a reversion seised in the Donor for that the Donee had an Estate of inheritance, the Judges resolved that he should hold of his Donor, as his Donor held over: as if the Tenant had made a Feoffment in Fee at the common law, the Feoffee should have holden of the Feoffor as he held over. and before the statute of W. 2. the Donee had holden of the Donor as of his person, and now of him as of his reversion: but if a man make a lease for life, or years, and reserve nothing, he shall have fealty only and no rent, though the Lessor hold over by rent, &c. And this that Littleton saith, is regularly true, if the Donor maketh no special reservation, for then the special reservation excludes the tenure which the Law would create. As if tenant by Knights service maketh a gift in taile reserving Fealty and Rent, the Donee shall hold in Soccage, by Fealty and Rent, and not by Knights service. But if a man hold land of the King in grand serjanty, and maketh a gift in tail generally: in this case the Donee shall not hold of the Donor by grand serjanty, because no man can hold by grand serjanty, but of the King only, as hereafter shall be said, and therefore seeing grandserjanty doth include Knights service, he shall in that case hold of the Donor by Knights service. If a man seised of land in the right of his wife holden by Knights service, giveth the same lands in tail generally, the Donee shall not hold of him by Knights service, because his wife held the land, and he had nothing but in her right. And in that case the Baron hath gained a new reversion by wrong, and therefore such a Donee shall do Fealty only.

A. seised of two acres of land, holdeth the one of B. by Knights service, and twelve pence Rent, and the other of C. in Socage and one penny Rent, and makes a gift in taile of both Acres without any express reservation of any tenure. In this case the Donor hath but one reversion. And yet he shall make several avowries, because there be several tenures created by law in respect of the several tenures over: and the avowry is made in respect of the tenures.

Lord, Meine and Tenant, the Tenant holdeth by four pence, and the Meine by twelve pence, the Tenant makes a gift in tail without reserving any thing, by reason whereof he holdeth by four pence, in respect of the tenure over. Afterwards the reversion escheat, now shall the Donee hold by twelve pence, for the Meinalty which was four pence is extinct, and the law reserved the tenure upon the gift in tail, in respect of the Meinalty, and when the Meinalty is extinct, the former Rent between the Donor and Donee is extinct also, and then by the same reason that the Donee shall take advantage, if the Donor by release or confirmation had holden by lesser services, by the same reason he shall be prejudiced, when he holdeth by greater services. 49.E.3.12.

¶ *Forsprise les donees en Frankmarriage.* It is to be understood, that although the Land be given in liberum maritagium, in free marriage generally, yet first the law doth make a limitation of this word (free) viz. till the fourth degree bee past, for the reason that our Author here yieldeth. And 2. albeit it be free marriage, yet the Donees and their issues until the fourth degree be past shall do fealty, for that is incident to every tenure (except Frankalmoign) and cannot be separated from it, and therefore the Donees and their issues shall hold it as freely till the fourth degree be past as the Donor can make it. See more of this in the chapter of Frankalmoigne. Bracton.lib.2.fol.21. Britton cap.119. Fleta lib.3.cap.11. & lib.6.cap.2. Vide Sect.17.20.

Sect. 20.

¶ Et les degrees en frankmarriage ferront accompts en tiel manner. ſ. de

And the degrees in frá kmariage shall be accounted in this manner, *viz.* from

¶ Where Littleton saith (a) that the Donees in frankmarriage shall hold by fealty only until the fourth (a) Vide Sect.17.19.138. 268.269.271.733.

degree be paſt, & then the iſſue in the firſt degree ſhall hold of the Donor as the Donor holdeth over, (b) vide Bracton ubi ſupra, Ita quod ille cui terra ſic data fuit, nullum inde faciat ſervicium uſque ad tertium hæredem & uſque quartum gradum, ita quod tertius hæres ſit incluſus. And herewith alſo agreeth Fleta ubi ſupra. And the (c) learning of degrees ſet out in the civil and canon Law (wherein I find ſome difference) is worthy the knowledge, to the end that Littleton and the law in this caſe may the better be underſtood, which I will divide into certain rules, whereof the firſt is; That a perſon added to a perſon in the line of conſanguinity maketh a degree. And it is to be underſtood, that a line is threefold, viz. the line aſcending, deſcending, and collateral. And firſt for example, of the aſcending line, take the Son and adde the Father, and it is one degree aſcending, adde the Grandfather to the Father, and it is a ſecond degree aſcending.

So as how many perſons there be, take away one, and you have the number of degrees. If there be four perſons it is the third degree, if five the fourth, for one muſt exceed, and then you have the degree. Likewiſe by the deſcending, take the Father, and adde the ſon, and it is one degree; then take the ſon and add the Grandchild, and it is the ſecond degree, and ſo likewiſe further. wherein obſerve that the Father, ſon and Grandchild, albeit there are three perſons, yet they make but two degrees, becauſe (as it hath been ſaid) one muſt exceed for making a degree.

It is to be noted, that in every line the perſon muſt be reckoned from whom the computation is made. And there is no difference between the canon and civil Law in the aſcending and deſcending line; for thoſe whom the Civilians do reckon in the ſecond degree, the Canoniſts do reckon in the firſt, and thoſe whom they place in the fourth, theſe place in

(b) Glanvill.lib.7.ca.18. Bract.lib.2.fol.21. Britton.cap.119. Fleta lib.3.cap.11.& lib. 6.cap.2.

(c) Vide 10. E. 3. tit. avowry. 157. 31.E.3.ceſſavit.22. 31.E.3.gard.116. 21.H.7.30.

1. Rule.

a.

2.

le donor a les donees en frankmarriage, le primer degree, pur ceo que la feme que eſt un des donees couiet eſtre file, ſoer, ou aux coulin a le donor. Et de les donees tanque a lour iſſue il terra accompt le ſecond degree, & de lour iſſue tanque a ſon iſſue, le tierce degree, & iſſint ouſter &c. Et la cauſe eſt, pur ceo que apres ceſt tiel done les iſſues queux veignont de le donor, & les iſſues queux veignont de les donees apres le quart degree paſſe de ambideux parties en tiel forme deſſus accompt, poyent enter eux per la ley a ſaint Egliſe entermarie. Et que le donee en frankmarriage ſerra dit le prime degree de les quart degrees hõe poit veier en un plee ſur un breve de Droit de Garde P. 31. E. 3. Lou le Pl. counta, que ſon treſaiel fuit ſeiſie de cert terre, &c. & ceo tenuſt dun autre per ſeruice de chiualer, &c. quel dona la terre a un Ralph Holland oueſq; ſa ſoer ẽ frankmarriage, &c.

the Donor to the Donees in frankmarriage the firſt degree, becauſe the wife, that is one of the Donees, ought to be daughter, ſiſter or other coſẽ to the donor, & from the dõees unto their iſſue ſhall be accounted the ſecond degree, & from their iſſue unto their iſſue the third degree, and ſo forth. And the reaſon is, becauſe that after every ſuch gift, the iſſues of the Donor, and the iſſues of the Donees after the fourth degree paſt of both parties in ſuch form to be accounted may by the law of the holy Church entermarry. And that the Donee in frankmarriage ſhall be ſaid to be the firſt degree of the four degrees, a man may ſee in a plea upon a Writ of Right of Ward, P. 31. *E.* 3. where the Pl. pleadeth that his great Grandfather was ſeiſed of certain Lands, &c. and held the ſame of another by Knight ſervice, &c. who gave the Land to one *Ralph Holland* with his ſiſter in Frankmarriage, &c.

in the ſecond. Therefore if we will know in what degree two of kindred do ſtand according to the Civil Law, we muſt begin our reckoning from one, by aſcending to the perſon from whom both are branched, and then by deſcending to the other to whom we do count, and it will appear in what degree they are. For example, In brothers and ſiſters [illegible], take one of them and aſcend to his father, there is one degree from the father to the grandfather, that is the ſecond degree, then deſcend from the grandfather to his ſon, that is the third degree, then from his ſon to his ſon, that is the fourth. But by the Cannon Law there is another computation, for the Canoniſts do ever begin from the ſtock, namely from the perſon of whom they do deſcend; of whoſe diſtance the queſtion is, For example, if the queſtion be, In what degree the ſons of two brothers ſtand by the Cannon Law? we muſt begin from the Grandfather and deſcend to one ſon, that is one degree; then deſcend to his ſon, that is another degree; then deſcend again from the Grandfather to his other ſon, that is one degree, then deſcend to his ſon, that is the ſecond degree, ſo in what degree either of them are diſtant from the common ſtock, in the ſame degree they are diſtant between themſelves: And if they be not equally diſtant, then we muſt obſerve another Rule. In what degree the moſt remote is diſtant from the common ſtock, in the ſame degree they are diſtant between themſelves, and ſo the moſt remote maketh the degree. And albeit the Donee be a Couſin in the third or fourth degree from the Donor, yet in this computation it maketh the firſt degree: Gradus dicitur à gradiendo, quia gradiendo aſcenditur & deſcenditur. And thus much of the Civil and Cannon Law is neceſſary to the knowledge of the Common law in this point: And herewith agreeth our Author in the words following.

¶ *Les iſſues queux veignont de le donor, & les iſſues queux veignont de les donees apres le 4. degree paſſe dambideux parties in tiel forme deſte account poient enter eux per le Ley de Saint Egliſe entermarrier.* (De Saint Egliſe) (d) So as hereby it appeareth, That the computation of the degrees in this caſe, muſt be according to the Cannon law. But it is neceſſary to be known concerning Marriages between perſons of kindred one to another, that it is enacted (e) by the ſtatute of 32. H. 8. that no reſervation or prohibition (Gods Law except) ſhall trouble or impeach any marriage without the Leyttical degrees.

(d) Brit. ca. 119. Accord. Flet. lib. 3. ca. 11. & lib. 6. c. 2.

(e) 32. H. 8. ca. 38.

The caſe vouched by Littleton in 31. E. 3. you ſhall find abridged by Fitzh. tit. gard. 116. And albeit this year of 31. E. 3. was never in print till Fitzherbert did abridge it and publiſh it in print anno 11. H. 8. and goeth under the name of broken years, yet here it appeareth by our Author, that the ſame is of Authority in law, as hereafter alſo in other places ſhall be obſerved.

Sect. 21.

¶ Et touts ceux tailes avãdits, ſont ſpecifies en le dit eſtatute de W. 2. Auxy ſont divers auts eſtates en le taile, coment q̃ ne ſont ſpecifies per expreſſe parols in le dit eſtatute mes ils ſont priſes per le equitie de le dit Statute. Sicome Terres ſont doneꝫ a un home & a ſes heirs maleꝫ de ſon corpꝫ engendꝛeꝫ, en

And all theſe Entails aforeſaid be ſpecified in the ſaid Statute of *W.* 2. Alſo there be divers other eſtates in taile, though they be not by expreſs words ſpecified in the ſaid Statute, but they are taken by the equity of the ſame ſtatute. As if lands be given to a man, and to his heirs males of his body begotten; in this caſe his iſſue male ſhal

¶ *Et touts ceux tailes avauntdits ſont ſpecifies en le dit ſtatute de Weſtminſter* 2. And ſo it appeareth by the ſaid Statute, Auxy ſont divers auters eſtates en le taile, &c. And herewith agreeth Carbonels Caſe, 33. Edw. 3. titulo Taile 5.

That the caſes of the ſtatute are ſet down but for examples of eſtates tail, general and ſpecial, and not to exclude other eſtates taile, 3. E. 3. 32. 18. Aſſ. p. 5. 18. E. 3. 46. 1. Mar. Dyer. 46. Pl. Com. Seignior Barkleys caſe. fo. 251. For, Exempla illuſtrant non reſtringunt legem.

3. E. 3. 32. 18. E. 3. 46. 18. Aſſ. p. 5. 1. Mar. Dy. 46. Pl. Com. 251.

¶ *Equity*

¶ *Equity* is a conſtruction made by the Iudges, that caſes out of the letter of a ſtat. yet being within the ſame miſchief, or cauſe of the making of the ſame, ſhall be within the ſame remedy that the Statute prouideth: And the reaſon hereof is, for that the Law-maker could not poſſibly ſet down all caſes in expreſs termes. Æquitas eſt convenientia rerum quæ cuncta coæquiparat, & quæ in paribus rationibus paria jura & judicia deſiderat. And again, Æquitas eſt perfecta quædam ratio quædam ratio quæ jus ſcriptum interpretatur & emendat, nulla ſcriptura comprehenſa, ſed ſolum in vera ratione conſiſtens. Æquitas eſt quaſi æqualitas. Bonus judex ſecundum æquum & bonum judicat, & æquitatem ſtricto juri præfert. Et jus reſpicit æquitatem.

tiel caſe ſ̄ iſſue male inherita, & le iſſue femal ñ unq̄ enherita pas, uncore in ꝑsaunts tailes avantdits auterment eſt.

inherit, and the Iſſue female ſhall never inherit, and yet in the other entailes aforeſaid, it is otherwiſe.

Brack.lib.4.fol.186.
(b) 18.Aſſ.p.5.18.E.3.46. 33.E.3.tit.Taile 5. 3.E.3.32.Pl.Com.Seigniour Barkleys caſe. ✠ Mar.Dy.46.V.Sect.24.

¶ *Si come terres ſont done a un home & a les* (b) *heires males de ſon corps engendres, en tiel caſe ſon iſſue male inheritera, & liſſue female ne unques inheritera, &c.* This ſhall be explained afterward, Sect. 24.

Sect. 22 & 23.

¶ Theſe two Sections, or any thing therein, do need no explanation, in reſpect they ſhal be alſo explained hereafter in the next Section, ſaving only theſe words (queux doient inheriter) are very obſervable, for they imply a diverſity between a deſcent and a purchaſe. For when a man giveth lands to a man and the heirs females of his body, and dyeth having iſſue a ſon and a daughter, the daughter ſhall inherit; for the will of the donor (the Statute working with it) ſhall be obſerved. But in caſe (g) of a purchaſe it is otherwiſe: For if A. have iſſue a ſon and a daughter, and a leaſe for life be made, the remainder to the heirs females of the body of A. A. dieth, the heir female can take nothing, becauſe ſhe is not heir; for ſhe muſt be both heir and heir female, which ſhe is not, becauſe the brother is heir, and therefore the will of the giver cannot be obſerved, becauſe here is no gift, and therefore the ſtatute cannot work thereupon. And ſo it is if a man hath a ſon and a daughter, and dieth, and lands be given to the daughter, and the heirs females of the body of her father, the daughter ſhall take

(g) 9.H.6.24.11.H.6.13. 14.27.H.8.Br.tit.Done 42.Tit.noſme 1. & 40. Dyer 23.El.374.Shelleys caſe lib.1.fo.

¶ Iſ̄ m̄ le manner eſt, ſi treſ ou tenements ſoint dones a un hõe & a ſes hr̄es females de ſon corps engendres, en tiel caſe ſon iſſue female luy inherita ꝑ force & fozm de le dit done, & nemy iſſue male, pur ceo que en tiels caſes de dones faits en le taile, queux doient enheriter, & q̄r nemy la volunt d̄ donoz ſerr̄ obſerve.

IN the ſame manner it is, if Lands or Tenements be given to a man, and to his heirs females of his body begotten; In this caſe his iſſue female ſhall inherit by force and form of the ſaid gift, and not his iſſue male. For in ſuch caſes of gifts in tail, the will of the Donor ought to be obſerved, who ought to inherit, and who not.

¶ Et en le caſe q̄ terr̄s ou tenements ſont dones a un hõe, & a ſes heires males d̄ ſ̄ corps iſſuants, & il ad iſſue deux fits, & deby, & leigh fitz entra come hr̄ male, & ad iſſue file & deby, ſ̄ frer̄ avant la fr̄, & nemy la file, pur

And in caſe where lands or tenemẽts be given to a man, and to the heirs of his body, and he hath iſſue two ſons, and dieth, and the eldeſt ſon enter as heir male, and hath iſſue a daughter, and dieth; his brother ſhall have the land, &

ceo

ceo que le frere eſt heire male. Mes auterment ſera en autres tailes q̃r ſõt ſpecifies en le dit Statute.

not the daughter, for that the brother is heir male. But otherwiſe it is in the other entailes, which are ſpecified in the ſaid Statute.

nothing but an eſtate for life, becauſe there is no ſuch perſon, ſhe being not heir. But where a gift is made to a man, & to the heirs female of his body, there the Donee being the firſt taker, is capable by purchaſe, & the heir female by deſcent, ſecundum formam doni: and therefore Littleton purpoſely added theſe words, Queux doient inheriter.

Sect. 24.

¶ Auxy ſi terres ſoient doñs a un hõe, & a les heires males ſon corps ingendres, & il ad iſſue file, q̃l ad iſſue fits & duy, & puis apres le donee deby, & ceſt cale le fits dela file ne inheritera paſſe p force dele taile, pur ceo que quecunque que ſerra inherit per force dun done en le taile fait as hes males, covient conveyer ſon diſcent tout per les heires males. Mes en tiel caſe le donor poet entrer pur ceo q̃ le donee & mort ſans iſſue male en la Ley, entaunt que le iſſue del file ne poet conveyer a luy meſme le diſcent per Heyre male.

ALſo if lands be given to a man and to the heirs males of his body, and he hath iſſue a daughter, who hath iſſue a ſon, and dieth, and after the donee dies; In this caſe the ſon of the daughter ſhall not inherit by force of the entaile, becauſe whoſoever ſhall inherit by force of a gift in taile made to the heirs males, ought to convey his deſcent wholly by the heires males. Alſo in this caſe the donor may enter, for that the donee is dead without iſſue male in the law, inſomuch as the iſſue of the daughter cannot convey to himſelf the deſcent by an heir male.

¶ *Quecunq; ſerra enheriter per force dun done en Taile, &c.* Vide Tr. (h) 28. H. 6. Tit. Deviſe 18. (which is not in the book at large, but written verbatim out of Statham) If a man deviſe lands to a man, & to the heirs males of his body, and hath iſſue a daughter, which hath iſſue a ſon, this ſon ſhall be inheritable, and notwithſtanding in a gift in taile the law is otherwiſe, and that by the opinion of all the Judges in the Exchequer Chamber. But I hold this caſe to be ill reported, unleſs you will referr the opinion of the Judges to the gift in taile laſt mentioned. For firſt, albeit a Deviſe may create an Inheritance by other words than a gift can, yet cannot a Deviſe direct an inheritance to deſcend againſt the rule of Law. Secondly, there is no intent of the Deviſor appearing, that the ſon of the daughter ſhould, againſt the rule of law, inherit, and the Statute provideth, that voluntas Donatoris, &c. obſervetur. And I have heard this caſe often denied to be Law, both in the Kings bench, and

Vide Sect. 719.
(h) 1. H. 6. 24. 11. H. 6. 13, 14. 28. H. 6. tit. Deviſe 18. Statham tit. Deviſe. Pl. Com. in Scholaſt. caſe 414. b. 20. H. 6. 43. 37. H. 8. Br. tit. Done & Rom. 61. tit, noſme 1, & 40.

in the Common Pleas, Vide Pl. Comment 414. b. And ſo it is (i) mutatis mutandis, when a gift in taile is made to a man, and to the heirs females of his body, and he hath iſſue a ſon, who hath iſſue a daughter, this daughter ſhall never inherit, becauſe ſhe muſt convey by deſcent from females. And for the reaſon hereof, ſee a notable caſe in 15. E. 2. tit. Corone 385. where it is adjudged (as before it had been) That the ſon of a female ſhould have an appeale of the death of a Coſine; and yet the daughter her ſelf ſhould never have had it. But there it is agreed, that the ſon of a female (k) in a Libertate probanda, ſhould be no witneſs or proof againſt the iſſue of the male. And the reaſon of this diverſity is very obſervable: For by the Common Law the female

(i) 11. H. 6. 13.
15. E. 2. Tit. Cor. 386.
(k) Mirror c. 2. ſect. 7. vid. Glanvil lib. 14. cap. 3.

might have had an appeal as heir to any of her Ancestors, as well as the male. But by the Statute of Magna Charta, cap. 34. Nullus capietur aut imprisonetur propter appellam fœminæ de morte alterius quam viri sui, which restraineth not the son of the female. And there Scrope saith, Per tout le Serjeant d' Angleterre, that is by all the Judges of the Coife in England, it was awarded, that the issue of the female should have an appeal for the death of his Cousin. But in a libertate probanda, the issue of the blood female shall not be received to prove villenage in the issue of the blood male, for the mother was disabled by the common Law, and the mother might be a neife De en & trene, that is of the water and whippe of three cord, (meaning such a bondwoman as is used to servile works and correction) and enfranchised by her husband, All which appeareth in the said book. And it is holden in 7. E. 4. 1. that if a man be slain which hath no heir of the part of his father, that his uncle of the part of his mother shall have the appeal, and yet he must of necessity make his conveyance by a woman. Vid. 20. H. 6. fo. 33. the question suddenly demanded and debated, and no consideration or mention had of the said former judgments and authorities; there it is compared to a gift in taile to a man and to his heirs males of his body, that the heir male of the daughter shall not inherit which hath no affinity to it, and yet the authoritie of the book is great, for it is by the assent of all the Justices of the one bench and the other in the Exchequer Chamber, and therefore I leave the learned and judicious reader to his own judgment. (l) vide Stanford 58. b. 15. E. 2. 384. If a man give lands to a man and to the heirs males of his body begotten, remainder to him and to his heires females on his body begotten, the Donee hath issue a son who hath issue a daughter, who hath issue a son, this son is not inheritable to either of both these estates taile, because as Littleton saith, The male must make his conveiance only by males, and so must the females by females. But in this case the land shall revert to the Donor. And therefore the safest way when a man will intaile his lands to the heirs males and females of his body, is to limit the first estate to him and the heirs males of his body, the remainder to him and to the heires of his body, and then all his issues whatsoever are inheritable. But if A. hath issue a son and a daughter and dieth, and the son hath issue a daughter and dieth, and a Leafe for life is made, the remainder to the heirs females of his body of A. In this case the daughter of A. shall not take causa qua supra. But albeit the daughter of the son maketh her conveyance by a male she shall take an estate taile by purchase, for she is heir and a female, but if lands be devised to one for life, the remainder to the next heir male of B. in taile, and B. hath issue two daughters and each of them hath issue a son and the father and daughters die, some say this remainder is void for the uncertainty, some say that the eldest shall take it because he is worthiest, and others say that both of them shall take for that they both make but one heir. If lands be given to a man and to the heirs males and females of his body he hath an estate in Central taile in him.

Vid. Seignior de la Wares case, lib. 11. fol. 1.

17. E. 4. 1.

20. H. 6. 43.

(l) Stanford, 58. b. 15. E. 2. tit. coron. 384.

11. H. 6. 13.

9. H. 6. 25.

Sect. 25.

¶ A Vn home, & a sa feme. But what if tenements be given to a man, and to a woman being not his wife, and to the heirs males of their two bodies, they have also an estate taile, albeit they be not married at that time. And so it is if Lands be given to a man which hath a wife, and to a woman which hath a husband, and the heires of their two bodies they have presently an estate taile (m) for the possibility that they may marry. But if lands be given to two husbands and their wives, and to the heirs of their bodies begotten (n) they shall take a joynt estate for life and several inheritances. viz. the one husband and his wife the one moity, and the other husband and wife the other moity, and no cross remainder or other possibility shall be allowed by law, where it is once setled and take effect. But if lands be given to a man and two women and the heires of their bodies begotten, (o) In this case they have a joynt estate for life and every of them several inheritance, because they cannot have one issue of their bodies, neither shall there be any construction a possibility upon a possibility, viz. that he shall marry the one first and then the other. And the same law it is (p) when land is given to two men and one woman, and to the heirs of their bodies begotten.

¶ En meisme le manner est, lou tenements sont done a un hõe, & a sa feme, & a les heires males de lour deux corps engendrés, &c.

IN the same manner it is where Lands are given to a man and his wife, and to the heires males of their two bodies begotten, &c.

11. E. 3. Formdon 20.

(m) 15. H. 7. 10. Li. 1. Dilon & Sirems case. 40. Ass. p. 12.

(n) 24. E. 3. 29. 2.

(o) 7. H. 4. 16. 16. E. 3. 78. Littleton fol. 66. 35. Eliz. Dier. 326.

(p) 44. E. 3. tit. taile 17.

Sect.

Sect. 26, 27.

26, 27. These two Sections need no explanation at all.

¶ Item si tents soient doneg a un home & a sa feme, & a les heires del corps del home engendrez, en ceo case le barō ad estate en le taile general, & la feme forsq; estate pur terme de vie.

ALso if tenements be given to a man and to his wife, & to the heirs of the body of the man; In this case the husband hath an estate in general taile, and the wife but an estate for term of life.

¶ Item si terres soient doneg a le baron & sa feme, & a les heires le baron, queux il engendra de corps sa feme, en ceo case le baron ad estate en le taile special, & la feme forsque pur terme de vie.

ALso if lands be given to the husband & wife, and to the heires of the husband which he shall beget on the body of his wife, In this case the husband hath an estate in especial taile & the wife but an estate for life.

Sect. 28.

¶ Et si le done dit fait al baron & a sa feme, & a les heires la feme de sa corps per le baron engendrez, donque la feme ad estate en especial taile, & le baron forsque pur terme de vie: Mes si terres sont doneg a le baron & a la feme, & a les heireg que la baron engendra de corps la feme, ē ceo case ambideux ont estate en la taile, pur ceo que cest parol (heires) nest limit a lun pluis que a lauter.

AND if the gift be made to the husband & to his wife, and to the heires of the body of the wife by the husband begotten, there the wife hath an estate in special tail, & the husband but for term of life: but if lands be given to the husband & the wife, and to the heirs which the husband shall beget on the body of the wife, in this case both of them have an estate taile, because this word (heirs) is not limited to the one more than to the other.

¶ *Heires.* This word (heirs) is nomen operationis, to which of the Dones it is limited, it createth the estate tail, but if it incline no more to the one than to the other, than both do take, as here Littleton putteth the case. And therewith accordeth the case of (q) 3.E.3. where it appeareth; Quod Robert' de S. dedit Johanni de Ripariis & Matildæ uxori ejus, & hæredibus quos idem Johannes de corpore ipsius Matildæ procrearet, &c. & this adjudged to be an estate in especial taile in them both, because the state is equally tailed to the heirs of the baron as to the heirs of the wife. If lands be given to the husband & the wife, and to the heirs of the body of the survivour, the gift is good, and the survivor shall have an estate in taile general, but the estate taile vesteth not till there be a survivour. And hereby it appeareth (r) that a gift made to a man & to the heirs of his body, is as good as to his heirs of his body.

19.H.6.75.a. Regist. 235.
17.E.2.tit.
3.E.3.32.
5.E.3.29.b.
21.E.3.43.
(q) 3.E.3.
19.H.6.75. per
Regist. 239.
(r) 20.E.3. Bre. 777.

Sect. 29.

¶ THis is evident by that which hath been ſaid and needeth no explanation. But it hath been ſaid, (ſ) that if a man give land to another and to his heirs of the body of ſuch a woman lawfully begotten, that this is no eſtate taile for the uncertainty by whom the heirs ſhall be begotten, for that the brother of the Donee or other couſin may have iſſue by the woman which may be heir to the Donee, and eſtates in taile muſt be certain. Therefore our Author to make it plain in all his caſes added to theſe words (his heirs) which he ſhall ingender. But that opinion is ſince our Author wrote over-ruled, and that eſtate adjudged to be an eſtate taile, and begotten ſhall be neceſſarily intended begotten by the Donee.

20.H.6.36.
(ſ) Lib.1.fol.140.b. Chauleighs caſe adjudge.

¶ Item ſi terre ſoit done a un home & a ſes heires que il engendra de corps ſa feme, en ceo caſe le baron ad eſtate en eſpecial taile, & la feme nad riens.

ALſo if land be given to a man and to his heirs which he ſhall beget on the body of his wife, In this caſe the husband hath an eſtate in eſpecial taile, and the wife hath nothing.

Sect. 30.

¶ *Si home ad iſſue fits & devie, &c.* John de Mandevile by his wife Roberge had iſſue Robert and Mawde, Michael de Morevill gave certain lands to Roberge and to the heirs of John Mandeville her late husband on her body begotten, and it was adjudged that Roberge had an eſtate but for life, and the fee taile veſted in Robert (heirs of the body of his father being a good name of purchaſe) and that when he dyed without iſſue, Mawde the daughter was tenant in taile as heir of the body of her father per formam doni, and the Formedon which ſhe brought ſuppoſed.

17.E.2.Taile 23.2.E.3.1. tit.Taile 7.4.& 5.Ph. & Mar.Dier 156. 12.H.4.1.15.H.7.10.

¶ Item ſi home ad iſſue fits, & devie, & terre eſt done al fits, & a les heirs de corps ſon pier engendres, ceo eſt bone taile, & uncore le pier fuit mort al temps de la done. Et mults auters eſtates en taile y ſont per le equitie del dit eſtatute que icy ne ſont ſpecifies.

ALſo if a man hath iſſue a ſon and dyeth, and land is given to the ſon, and to the heirs of the body of his father begotten, this is a good entaile, and yet the father was dead at the time of the gift. And there be many other eſtates in the taile by the equity of the ſaid ſtatute, which be not here ſpecified.

Quod poſt mortem præfatæ Robergiæ & Roberti filii & hæredis ipſius Johannis Mandevile & hæred' ipſius Johannis de præfata Robergia per præfatum Johannem procreat', præfat' Matildæ filiæ prædict' Johannis de præfata Robergia per præfatum Johannem procreatæ ſorori & hæredi prædicti Roberti deſcendere debet per formam donationis prædict'. And yet in truth the land did not deſcend unto her from Robert, but becauſe ſhe could have no other writ, it was adjudged to be good. In which caſe it is to be obſerved that albeit Robert being heir took an eſtate taile by purchaſe, and the daughter was no heir of his body at the time of the gift, yet ſhe recovered the land per formam doni, by the name of heir of the body of her father, which notwithſtanding her brother was and he was capable at the time of the gift; and therefore when the gift was made ſhe took nothing, but in expectancy, when ſhe became heir per formam doni. But where a man by deed gave lands to Emme late wife of John Maſter, habendum & tenendum prædict' Emme & hæredibus Johannis Maſter de corpore ejuſdem Emme procreat'. In that caſe the ſon and heir of John Maſter begotten on the body of Emme took no eſtate with Emme in the lands becauſe he was named after the habendum.

5.H.4.3.1.

If a man hath iſſue two daughters, and dieth ſeiſed of two acres of land in fee ſimple, and the one Coparcener giveth her part to her ſiſter, and to the heirs of the body of her father, In this caſe the Donee hath an eſtate taile in the moity of the Donors part, for the Donee is not entire heir but the Donor is heir with the Donee, and ſhe cannot give to the heirs of her own body, and the Donee hath the other moity of her ſiſters part for life. If a man hath iſſue a ſon and a daughter, and dieth, and land is given to the daughter and to the heires females

of

of the body of the father, he taketh but an Estate for life, because he is not heir female to take by purchase, as before hath been said.

¶ *Et a les heires de corps le pier.* These words (les heires) are observable, for if they were (ses heires) it clearly altered the case. And therefore if Lands be given to the son and to his heires of the body of his father, the son minor tant as puis of the body of his father, &c. causes the Grant is to him and to his heirs, &c. and consequently he hath a fee taile. But if there be Grandfather, Father and Son, and the father dieth, and Lands be given to the son, and to the heires of the body of the Grandfather; this is a good Estate taile to the son, by the Lit. tleton did put his case of the father but for an example.

¶ *Et mults autres estates en le taile y sont, &c.* This needeth no explanation.

Sect. 31.

¶ *Mes si home done terres ou tenements a un auter, a aver & tener a luy & a ses heires males, ou a ses heires females, il a que tiel done est fait ad fee simple, pur ceo que nest my limit per le done de quel corps issue male ou female issera, & illint ne poit en alcun maner estre puise per lequitie del dit estatute & pur ceo il ad fee simple.*

¶ But if a man give Lands or Tenements to another, to have and to hold to him and to his heirs females, he to whom such a gift is made, hath a Fee-simple, because it is not limited by the gift, of what body the issue male or female shall be, and so it cannot in any wise be taken by the equity of the said statute, and therefore he hath a Fee simple.

¶ *Terres ou Tenements.* This Rule extendeth but to Lands or Tenements, and not to the Inheritance that Noblemen and Gentlemen have in their Armories or Arms. For where the Nobleman or Gentleman hath a fee simple in his Armories or Arms, yet in the same descendible to the heirs males lineal or collateral. For albeit a Female be heir at the common law, yet the Shield, Armories and Arms descend unto them that are able to bear them (far exceeding the nature of Gavelkind, but with several differences.) And all the females of that Family in respect that they be of the same blood, may in a lozenge or under a curtain belonging to that Family, manifest of what Family they be by expressing the Armories and Arms and the husband of them may impale them or quarter them with their own as the case shall require. And for distinction and better explanation hereof. If the King by his Letters Patents giveth lands or Tenements to a man, and to his heirs males, the Grant is void, for that the King is deceived in his Grant, in as much as there can be no such Inheritance of lands or Tenements as the King intended to grant. But if the King for reward of service granteth Armories or Arms to a man, and to his heirs males without saying (of the body) this is good, and as hath been said, they shall descend accordingly. 18.H.8.tit.Patents. Br. 104.

If a man by his last will devise lands or Tenements to a man and to his heirs males, this by construction of law is an Estate taile, the law supplying these words (of his body.) Vide 27.H.8.27.

the Printes (t) case, where it appeareth that an Act of Parliament may limit an Inheritance of lands or Tenements, otherwise than common law would do, and create a new Estate of Inheritance, and many Authorities in law there cited worthy of note and observation. Rot. Parliam. anno 1. E. 4. nu. 26. The (u) Dutchy of Lancaster is intailed to King Edward the fourth and his heirs Kings of England. And King Henry the sixth did by his Letters Patents grant Johanni filio Johannis Talbot quod ipse & hæredes sui Domini maneriі de Kingston Lisle in comitatu Berk. ex nunc Domini & Barones de Lisle Nobiles & Proceres regni habeantur, teneantur, & reputentur, &c. by this he had a fee simple qualified in the Dignity. (t) Lib.8.fo.1.The Princes case. 21.E.3.4.22.E.3.3. 24. E.3.53.9.H.6.25. 9.E.4. 15.1.Marie Dyer 94. (u) Per literas patentes authoritate Parliamenti.

2. H. 5. fol. 1. A Grant was made to a man, and to his heirs Tenants of the Mannor of Dale. A man seised of lands in Gavelkind, give or devise the same to a man and to his eldest heirs, he cannot hereby alter the customary Inheritance, but as in the case of our Au-

thor, *Ut res magis valeat*, the Law directeth (Males) so in this case the law directeth this Adjective (eldest.) And so it is if Lands be given to a man, and to the eldest heirs females of his body, yet all his Daughters shall inherit as it hath been resolved.

Mich. 26. & 27. Eliz. in Com. Banco. Leonard Lovelace case.

¶ *Et issint ne poet este prise per lequitie del dit statute, &c.* For it is a certain Rule in law that in every Estate in taile within the said statute, it must be limited either by expresse words or by words equipollant of what body the heir inheritable shall issue. And it was (x) adjudged in Parliament, that where lands were given to a man, and to his heirs males, that this was a fee simple, and that as well the heirs females as heirs males should inherit, for the Grant of a subject shall be taken most strongly against himself.

(x) 18. Ass. p. 5. 18. E. 3. 46. 6. 9. H. 6. 23, 25. lib. 8. fol. 1. The Princes case. Ancient Tenures. fol. 3.

¶ *Et pur ceo il ad Fee simple.* Littletons reason being shortly collected is this. Whosoever hath an Estate of Inheritance, hath either a fee simple or a fee taile, but where lands be given to a man and his heirs males, he hath no Estate taile, and therefore he hath a fee simple.

What Actions Tenant in taile may have and cannot have, vide Sect. 595. What great alterations have been made since Littleton wrote concerning not only Leases to be made by Tenant in taile, but bars also of the Estate taile it self by force of certain Acts of Parliament made since Littletons time, you shall read Sect. 56. and 708.

Chap. 3. Sect. 32.

Tenant in taile apres possibilitie dissue extinct.

LIttleton having spoken of estates of inheritance, viz. fee simple and fee taile, now he treateth of Tenants of freehold tantum, that is, for terme of life. and therein first of Tenant in taile after possibility of issue extinct, and he giveth unto him the first place, because this Tenant hath right Qualities and Priviledges which tenant in taile himself hath, and which lesse for life hath not. (a) As first he is unpunishable for waste. Secondly, he shall not be compell'd to attorn. Thirdly, he shall not have ayd of him in the reversion. Fourthly, upon his alienation, no writ of entry in consimili casu, lyeth. Fifthly, after his death no writ of Intrusion doth lie. Sixthly, he may joyn the mise in a writ of Right, in a special manner. Seventhly, In a Præcipe, brought by him he shall not name himself tenant for life. Eighthly, In a Præcipe brought against him he shall not be named barely tenant for life. And yet he hath four other qualities which are not agreeable to an

(a) Temps E. 1. wast. 125. 39. E. 3. 16. 31. E. 3. aid. 35. 42. E. 3. 22 42. E. 3. 1. 45. E. 3. 22. 28. E. 3. 96. 46. E. 3. 13. 27. 2. H. 4. 17. 7. H. 4. 10. 11. H. 4. 15. 21. H. 6. 56. 10. H. 6. 1. 26. H. 6. aid. 77. 3. E. 4. 11. 12. E. 2. Entre Conge. 56. Fitz. N. B. 203. Lewes Bowles case, lib. 11. fol. 8.

TEnant en fee taile apres possibilitie dissue extinct est, lou tenemẽts sont donez a un hõe & a la feme en especial taile, si lun de eux deby sans issue, celuy que survesquist est Tenant en taile apres possibilitie dissue extinct. Et sils aveient issue, & lun debie, coment que durant la vie, lissue celuy que survesquist ne serra dit tenant en taile apres possibilitie dissue extinct, uncore si lissue deby sans issue, issint que ne soit ascun issue en vie que poit enheriter p force de le taile, donque celuy que survesquist

TEnant in Fee Taile after possibilitie of issue extinct is, where Tenements are given to a man, and to his wife in especial taile, if one of them die without issue, the Survivor is Tenant in taile after possibility of issue extinct, and if they have issue, and the one die, albeit that during the life of the issue, the survivor shall not be said tenant in taile after possibility of issue extinct, yet if the issue dy without issue, so as there be not any issue alive which may inherit by force of the taile, then the surviving party of the Donees

de les donees eſt tenant en le taile apres poſſibilitie diſſue extinct.

nees is tenant in taile, after poſſibility of iſſue extinct.

Reverſion, or remainder deſcend or come to this Tenant, his Eſtate is drowned, and the fee or fee taile executed. Thirdly, he in the Reverſion or remainder ſhall be received upon his default, as well as upon bare Tenant for life. Fourthly, an exchange between a bare Tenant for life and him is good, for their Eſtates in reſpect of their quantity are equal, ſo as the difference ſtandeth in the quality, and not in the quantity of the Eſtate. And as an Eſtate taile was originally carved out of a fee ſimple, ſo is the Eſtate of this Tenant out of an Eſtate in eſpecial taile. And he is called Tenant in taile after poſſibility of iſſue extinct, becauſe by no poſſibility he can have any iſſue inheritable to the ſame Eſtate taile. But if a man giveth land to a man and his wife, and to the heirs of their two bodies, and they live till each of them be C. year old, and have no iſſue, yet do they continue Tenant in taile for that the law ſeeth no impoſſibility of having children. But when a man and his wife be Tenant in eſpecial taile, and the wife dieth without iſſue, there the law ſeeth an apparent impoſſibility, that any iſſue that the husband can have by any other wife ſhould inherit this Eſtate. And let this Tenant keep his Eſtate for he hath theſe priviledges in reſpect of the privity of his Eſtate, and of the Inheritance that was once in him. (c) For in the caſe of Evens, Mich. 28. & 29. Eliz. it was adjudged that where Tenant in taile after poſſibility of iſſue extinct granted over his Eſtate to another, that his Grantee was compelled to attorn in a quid juris clamat, as a bare Tenant for life, and ſo be named in the writ, for by the Aſſignment the privity of the Eſtate being altered, the priviledge was gone, and this judgment was affirmed in a writ of Error, and herewith agreeth 27. H. 6. tit. aid. Statham 29. E. 3. 1. b.

Eſtate in taile, but to a bare leſſee for life. (b) Firſt, if he maketh a feoffment in fee, this is a forfeiture of his Eſtate. Secondly, If an Eſtate in fee, or in fee taile in

(b) 13. E. Entre Cong. 56. 45. E. 3. 22. 28. E. 3. 96. 27. Aſſ. p. 60. F.N.B. 159. 32. E. 3. tit. ag. 55. 55. E. 3. 4. 9. E. 4. 17. 2. R. 2. reſceit. 147. 41. E. 3. 12. 20. E. 3. reſceit 38. E. 3. 33. Lewes Bowles caſe ubi ſupra.

(c) Lib. 11. fol. 83. Lewes Bowles caſe. 27. H. 6. tit. aid. Statham. 29. E. 3. 1. b.

27. H. 6. tit. aid. 29. E. 3. 1. b.

Sect. 33.

¶ Item ſi tenements ſont dones a un home & a ſes heires que il engendra de corps la feme, en ceſt cas la feme nad ryen en les tenements, & le baron eſt ſeiſie come donee en ſpecial taile. Et en ceo cas, ſi la feme deby ſans iſſue de ſon corps engendres per ſon baron, donques le baron eſt tenant en taile apres poſſibility diſſue extinct.

ALſo if Tenements be given to a man and to his heirs which he ſhall beget on the body of his wife. In this caſe the wife hath nothing in the Tenements, & the husband is ſeiſed as Donee in eſpecial taile. And in this Caſe if the wife die without iſſue of her body begotten by her husband, then the husband is Tenant in Taile after poſſibility of iſſue extinct.

¶ *Si la feme devie ſans iſſue.* So as the eſtate of this tenancy muſt be altered by the act of God, and that by dying without iſſue, for if a feoffment in fee be made to the uſe of a man and his wife for tearm of their lives, & after to the uſe of their next iſſue male to be begotten in taile, and after to the uſe of the husband and wife, and of the heirs of their two bodies begotten they having no iſſue male at that time; In this caſe the husband and wife are Tenants in ſpecial taile executed, and after they have iſſue a ſon in this caſe, they are become tenants for life, the remainder to the ſon in taile, the remainder to them in ſpecial taile, for albeit their Eſtate

Lewes Bowles caſe lib. 11. fol. 80.

taile is turned to an Eſtate for life, yet they have a bare Eſtate for life, but if the iſſue die, and the husband die having no other iſſue, and then the ſon die without iſſue, the wife ſhall have the priviledges belonging to a Tenant in taile after poſſibility of iſſue extinct, as it appeareth in Lewes Bowles caſe ubi ſupra, where it is ſaid, that the ſtate of this Tenant muſt be created by the act of God, and not by limitation of the party, ex diſpoſitione Legis, and not ex proviſione hominis. (d) If land be given to a man and to his wife, and to the heirs of their two bodies, and after they are divorced cauſâ præcontractus or conſanguinitatis, or affinitatis, their Eſtate of Inheritance is turned to a joynt Eſtate for life, and albeit they had once an Inheritance in them, yet for that the Eſtate is altered by their own Act, and not by the act of God, viz. by the

(d) 7. H. 4. 16. 8. E. 1. Aſſ. 415. 12. Aſſ. 22. 19. Aſſ. p. 2. 13. E. 3. Aſſ. 91. in fine.

the death of either party without iſſue, they are not Tenants in taile after poſſibility of iſſue extinct. Lands are given to the husband and wife, and to the heirs of the body of the husband, the remainder to the husband and wife, and to the heirs of their two bodies begotten, the husband die without iſſue, the wife ſhall not be Tenant in taile after poſſibility, for the remainder in ſpecial taile was utterly voyd, for that it could never take effect, for ſo long as the husband ſhould have iſſue, it ſhould inherit by force of the general taile, and if the husband die without iſſue, then the ſpecial Eſtate taile cannot take effect, in as much as the iſſue which ſhould inherit the eſpecial, muſt be begotten by the husband, and ſo the general which is larger and greater, hath frustrated the eſpecial which is leſſer. And the wife in that caſe ſhall be puniſhed for waſte.

Sect. 34.

IF lands be given to a man with a woman in Frankmarriage, albeit the woman (which was the cauſe of the gift) dieth without iſſue, yet the husband ſhall be Tenant in taile, apres poſſibilitie, &c. for that he and his wife were Donees in eſpecial taile, and ſo within the words of Littleton. The reſidue of this Section is evident.

ET nota q̄ nul poit eſtre teñt en le taile aps poſſibility diſſue extinct, forſ. ꝙ un des Donees, ou le Donee en le ſpecial taile. Car le Donee en general taile ne poit eſtr̄ unq̄ dit teñt en taile aps poſſibility diſſue extinct, pur ceo q̄ touts tẽmps durãt ſa vie, il poit per poſſibility aver iſſue que poit inheriter per force de meſme le taile. Et iſſint en ñ le mañ, liſſue q̄ eſt heire a les Donees en un eſpecial taile, ne poit eſtre dit teñt en taile aps poſſibilitie diſſue extinct, cauſa qua ſupra.

AND note that none can be Tenant in taile after poſſibility of iſſue extinct, but one of the Donees, or Donee in eſpecial taile. For the Donee in general taile cannot be ſaid to be Tenant in taile after poſſibility of iſſue extinct, becauſe alwayes during his life, he may by poſſibility have iſſue which may inherit by force of the ſame entaile. And ſo in the ſame manner the iſſue which is heir to the Donees in eſpecial taile, cannot be Tenant in taile after poſſibility of iſſue extinct, for the reaſon aboveſaid.

* Et nota que tenant en taile aps poſſibilitie diſſue extinct ne ſerra unq̄ puny de waſt, pur lenheritance que fuit un foits en luy, 10 Hen. 6. 1. Mes ceſtuy en le reverſion poit entrer ſil alien en fee, 45. E. 3. 22.

And note that Tenant in taile after poſſibility of iſſue extinct ſhall not be puniſhed of waſte, for the inheritance that once was in him, 10. H. 6. 1. But he in the reverſion may enter if he alien in fee, 45. E. 3. 22.

* This and that which follow, is not in the firſt Edition (which I have.) And therefore (that I may ſpeak it once for all) it was wrong to the Author to adde any thing, (eſpecially in one context) to his worke.

CHAP.

Chap. 4. Sect. 35.

Curteſie Dengleterre.

¶ TEnantper la Curteſie Dengleterre eſt, lou home pɼẽt feme ſeiſie en fee ſimple, ou en fee taiꝛ general, ou ſeiſie come heire de le taile ſpecial, & ad iſſue per meſme la feme male ou female, oyes ou vife, ſoit iſſue apɼes moꝛt ou en vie, ſi la feme devie, le baron tiendꝛa la terre durant ſa vie, per la ley Dengleterre. Et eſt appel tenant per le Curteſie Dengleterre, pur ceo que ceo eſt uſe en nul auter realme, foꝛſque tant ſolement en Engleterre.

Et alcuns ont dit, que il ne ſerra tenant per le Curteſie, ſi non q̃ lenfant quil ad p̃ ſa feme ſoit oye crie, car p̃ le crie eſt pve q̃ le enfant fuit nee vife: Ideo Quære

¶ TEnant by the curteſie of *England* is where a man taketh a wife ſeiſed in fee ſimple, or in fee taile general, or ſeiſed as heir in taile eſpecial, and hath iſſue by the ſame wife, male or female born alive, albeit the iſſue after dieth or liveth, yet if the wife dies, the huſband ſhall hold the land during his life by the Law of *England*. And he is called tenant by the curteſie of *England*, becauſe this is uſed in no other Realm but in *England* only.

And ſome have ſaid, that he ſhall not be tenant by the curteſie, unleſs the Childe which he hath by his wife be heard crie; for by the crie it is proved that the child was born alive. Therfore Quære.

¶ *Priſt ſeme ſeiſie.* And firſt of what ſeiſin a man ſhall be Tenant by the curteſie. (e) There is in Law a twofold ſeiſin, viz. a ſeiſin in Deed, and a ſeiſin in Law, whereof moꝛe ſhall be ſaid, Sect. 468. & 681. And here Littleton intendeth a ſeiſin in Deed if it may be attained unto. (f) As if a man dieth ſeiſed of lands in fee ſimple oꝛ fee taile general, and theſe lands deſcend to his daughter, and ſhe taketh a huſband and hath iſſue, and dieth beꝛoꝛe any entry, the huſband ſhall not be tenant by the curteſie, and yet in this caſe ſhe had a ſeiſin in law, but if ſhe oꝛ her huſband had during her life entred, he ſhould have been tenant by the Curteſie. (g) A man ſeiſed of an Advowſon oꝛ rent in fee hath iſſue a Daughter, who is married, and hath iſſue, and dieth ſeiſed, the wife beꝛoꝛe the rent became due, oꝛ the Church became void, dieth, ſhe had but a ſeiſin in Law, and yet he ſhall be tenant by the curteſie, becauſe he could by no induſtry attain to any other ſeiſin, Et impotentia excuſat legem. But a man ſhall not be Tenant by the curteſie of a bare right, title, uſe, oꝛ of a reverſion oꝛ remainder expectant upon any eſtate of freehold, unleſs the particular eſtate be determined oꝛ ended during the coverture.

(e) F.N.B.194.

(f) 1. Mar. Dyer.55.

(g) 7.E.3.66.3.H.7.5.

At the Coronation of King R. 2. ſaith the Record, (h) Johannes Rex Caſtillæ & Legionis Dux Lancaſtriæ, coram dicto domino rege & conſilio ſuo comparens clamavit ut comes Leiceſtriæ officium ſeneſchalciæ Angliæ, & ut dux Lancaſtriæ ad gerendum principalem gladium domini Regis vocat' Curtana die coronationis ejuſdem regis, & ut comes Lincoln' ad ſcindendum & ſecandum coram ipſo domino Rege ſedente ad menſam dicto die coronationis, & quia fact' diligenti examinatione coram peritis de conſilio regis de præmiſſis ſatis conſtabat eidem conſilio, quod ad ipſum ducem tanquam tenentem per legem Angliæ poſt mortem Blanchiæ quondam uxoris ſuæ pertinuit officia prædict' prout ſuperius clamabat exercere, conſideratum fuit per ipſum regem & conſilium ſuum prædictum, quod idem dux officia prædicta per ſe & ſufficientes deputatos ſuos faceret & exerceret, & fœda debita in

(h) Proceſſ. fact. ad coronationem R. 2. Anno regni ſui primo Rot. claus. m. 45.

hac parte obtineret. Qui quidem dux officium Seneſchalciæ prædict' perſonaliter adimplevit, &c. And every man that claimed to hold by grand Serjanty to do any ſervice to the King at his Coronation, exhibited his petition to the ſaid Duke as Steward of England, who upon hearing the proofs either allowed or diſallowed the ſame.

Rot. Patent. Ann. 20. H. 6

In Letters Patents made by King H. 8. to Richard Earl of Salisbury you ſhall find this clauſe, Quod chariſſimus conſanguineus noſter Richardus nunc comes Sarum qui Aliciam filiam & hæredem Thomæ nuper comitis Sarum adhuc ſuperſtitem duxit in uxorem, & cum eadem Alicia prolem tempore mortis prædictæ Thomæ habuit & habet ſuperſtitem de præſenti, eoque prætextu idem Richardus nunc comes Sarum nomen, ſtatum & honorem comitis Sarum, &c. habet, & pro tempore vitæ ſuæ de jure prætextu præmiſſorum habere debet. The name of the iſſue which the ſaid Richard Earle of Saliſbury had by the ſaid Alice was Richard, who married with Anne the ſiſter and heir of Henry Beauchamp Earle of Warwick, who was Earl of Warwick to him and to his heirs, and Duke of Warwick to him and to the heirs males of his body. And Richard the ſon having then no iſſue by his wife, King H. 6. in 27. year of his raign granted to him that he ſhould be Earl of Warwick, Licet ipſe & prædicta Anna exitum inter eos ad præſens non habent. Theſe and many more I have read concerning this matter, and only ſay to the reader, Utere tuo judicio, nihil enim impedio.

Rot. Patent. de anno 27. H. 6. m.

(i) Vide 1. E. 3. 6. 5. E. 3. 26

(i) If an eſtate of freehold in Seignioxies, Rents, commons, or ſuch like, be ſuſpended, a man ſhall not be tenant by the curteſie, but if the ſuſpenſion be but for years, he ſhall be Tenant by the curteſie. As if a tenant make a leaſe for life of the tenancy to the Seignioreſſe, who taketha husband, and hath iſſue, the wife dieth, he ſhall not be tenant by the curteſie, but if the leaſe had been made but for years he ſhall be tenant by the curteſie.

¶ *En Fee ſimple ou en Fee taile generall, ou ſeiſie come heire de la taile ſpecial & ad iſſue per la feme male ou female.* Secondly, of what eſtate. If lands be given to a woman and to the heirs male of her body, ſhe taketh a husband and hath iſſue a daughter and dieth, he ſhall not be tenant by the curteſie, becauſe the daughter by no poſſibility could inherit the mothers eſtate in the land, and therefore where Littleton ſaith, iſſue by his wife male or female, it is to be underſtood, which by poſſibility may inherit as heir to her mother of ſuch eſtate. Littleton himſelf expleineth this by expreſs words Cap. Dower fo. 10. Sect. 52. And therefore if a woman tenant in taile general maketh a Feoffment in fee, and taketh back an eſtate in fee; and take a husband and hath iſſue, and the wife dieth, the iſſue may in a Formedon recover the land againſt his father, becauſe he is to recover by force of the eſtate taile as heir to his mother and is not inheritable to his father.

W. 2. ca. 1. Litt. ca. dower fol. 10. ſect. 52. Paines caſe lib. 8. fol. 34.

¶ *Et ad iſſue.* 3. The time of having the iſſue. 4. What kind of iſſue. If a man ſeiſed of lands in fee hath iſſue a daughter, who taketh husband and hath iſſue, the father dieth, the husband enter, he (a) ſhall be tenant by the curteſie, albeit the iſſue was had before the wife was ſeiſed. And ſo it is albeit the iſſue had dyed in the like time of her father before any deſcent of the land, yet ſhall he be tenant by the curteſie. If a woman (b) ſeiſed of lands in fee taketh husband, and by him is bigg with child, and in her travel dieth, and the childe is ripped out of her body alive, yet ſhall he not be Tenant by the curteſie, becauſe the child was not born during the marriage nor in the life of the wife, but in the mean time her land deſcended, and in pleading he muſt alledge, That he had iſſue during the marriage.

(a) Old tenures 21. H. 3. tit. dower 198.

(b) Vide Paines caſe, ubi ſupra.

If the wife be (c) delivered of a Monſter which hath not the ſhape of mankind, this is no iſſue in the law, but although the iſſue hath ſome deformity in any part of his body, yet if he hath humane ſhape this ſufficeth. Hii qui contra formam humani generis converſo more procreantur (ut ſi mulieri monſtroſum vel prodigioſum fuerit enixa) inter liberos non computentur, partus tamen cui naturæ aliquantulum ampliaverit vel diminuerit non tamen ſuperabundantur, ut ſi ſex digitos vel nili quatuor habuerit, bene debet inter liberos commemorari. Si inutilia natura reddidit membra, ut ſi curvus fuerit aut gibboſus vel membra tortuoſa habuerit, non tamen eſt partus monſtroſus, Item puerorum alii ſunt maſculi, alii fœminæ, alii Hermophraditæ, hermophradita tam maſculo quam fœminæ comparatur ſecundum prævaleſcentiam ſexus incaleſcentis.

(c) Bract. lib. 5. 437. 438. Britt. ca. 66. & ca. 82. Fleta lib. 1. c. 5. & lib. 6. cap. 54.

If the iſſue be born deaf or dumb or both, or be born an Ideot, yet is it a lawful iſſue to make the husband Tenant by the curteſie and to inherit the land.

¶ *Oyes on vive.* If it be born alive (d) it is ſufficient, though it be not heard cry; for peradventure it may be born dumb. And this is reſolved clearly in Paines caſe ubi ſupra. For the pleading (as hath been ſaid) is, That during the marriage he had iſſue by his wife, and upon that point the triall is to be had, and upon the evidence it muſt be proved, that the iſſue was alive, for mortuus exitus non eſt exitus, ſo as the crying is but a proof that the child was born alive, and ſo is motion ſtirring and the like. And it is ſaid by an ancient Author (e) that it was ordained in the raign of King H. 1. Que touts que ſurvequiſt ſont

(d) 18. H. 8. 25. Dyer. Paynes caſe ubi ſupra.

(e) Mirror. cap. 1. ſect. 3.

ſent lour femes dount ils uſſent conceive tenuiſſent les heritages lour fems pur lour vies.

By the cuſtom of Gavelkind (f) a man may be Tenant by the curteſie without having of any iſſue.

(f) 9.E.3.38 16.E.3. aid 129. Stat. de Conſuetudinibus Kanciæ.

¶ *Soit liſſue apres mort ou en vie.* And therefore (g) if a woman Tenant in taile general taketh a husband and hath iſſue, which iſſue dyeth and the wife dieth without any other iſſue, yet the husband ſhall be tenant by the curteſie albeit the eſtate in taile be determined, becauſe he was intitled to be tenant Per legem Angliæ before the eſtate in taile was ſpent, and for that the land remaineth. But if a woman maketh a gift in taile and reſerve a rent, to her and to her heirs, and the Donor taketh husband and hath iſſue, and the donee dieth without iſſue, the wife dieth, the husband ſhall not be tenant by the curteſie of the rent, for that the rent newly reſerved is by the act of God determined and no ſtate thereof remaineth. But (h) if a man be ſeiſed in fee of a Rent and maketh a gift in taile general to a woman, ſhe taketh husband and hath iſſue, the iſſue dieth, the wife dieth without iſſue, he ſhall be tenant by the curteſie, of the rent, becauſe the rent remaineth. The diverſity appeareth.

(g) 21.H.3.tit.Dower 198. Paines caſe, ubi ſupr.

(h) Brooke.tit.per le Curteſie 86. 10.E.3.27.

¶ *Si la feme devie, le baron tiendra la terre, &c.* Four things do belong to an eſtate of Tenancy by the curteſie, viz. Marriage; Seiſin of the wife; Iſſue, and death of the wife. But it is not requiſite, that theſe ſhould concurr all together at one time: And therefore if a man taketh a woman ſeiſed of lands in fee and is diſſeiſed, and then have iſſue, and the wife die, he ſhall enter and hold by the curteſie. So if he hath iſſue which dieth before the deſcent, as is aforeſaid.

And albeit the ſtate be not conſummate until the death of the wife, yet the ſtate hath ſuch a beginning after iſſue had in the life of the wife as is reſpected in law for divers purpoſes.

Firſt, after iſſue had, he ſhall do homage alone, and is become tenant to the Lord, and the avowrie ſhall be made only upon the husband in the life of the wife, as ſhall be ſaid hereafter when we come to the apt place. Secondly, if after iſſue (i) the husband maketh a Feoffment in fee, and the wife dieth, the Feoffee ſhall hold it during the life of the husband, and the heir of the wife ſhall not during his life recover it in Sur cui in vita; for it could not be a forfeiture, for that the eſtate, at the time of the feoffment, was an eſtate of Tenancy by the Curteſie inchate, and not conſummate. And it is adjudged in 29. E. 3. that the tenant by the curteſie cannot claime by a Deviſe, and waive the ſtate of his tenancy by Curteſie, becauſe ſaith the book the freehold commenced in him before the deviſe for term of his life,

(i) 34.E.2.Cui in vita 13. 2.E.2.Cui in vita 26. 10.E.3.12. Dier 21.Eliz. 363.

29. E.3.fo.27.

¶ *Et eſt appel tenant per le curteſie dengleterre, pur ceo que neſt uſe en auter realme forſque tant ſolement en Engleterre.*

¶ *Per le Curteſie.* In latine Per legem Angliæ.

¶ *Tant ſolement en Engleterre.* It is alſo uſed within the Realm of Scotland, and there it is called Curialitas Scotiæ. And ſo it is in the Realm of Ireland.

¶ *Et aſcuns ount dit, que il ne ſerra tenant per le curteſie, ſinon que lenfant que il ad per ſa feme ſoit oye crie, car per le crie eſt prove que le enfant fuit nee vife.* Our Author having delivered his own opinion before, viz. Oyes ou vife, now he ſheweth the opinion of others: for ſo it is ſaid in the (k) ſtatute De tenentibus per legem Angliæ: and of that opinion is Glanvill. (l) lib.7.cap.8. Bracton lib.5. tract.5.cap.30. Britton ca.50.fol.132. Fleta lib.6.ca.50.&c. But the reaſon is againſt their opinion. For by the cry it is proved, &c. ſo as it is but an evidence to prove the life of the enfant.

(k) Vet mag.car.part.2. fol. 70.

(l) Glanvil.lib.7.cap.8. Bract.lib.5.tract.5.ca.30 Britton cap.50.fo.132. Fleta lib.6.cap.54.

¶ *Aſcons ont dit.* By theſe and the like ſpeeches our Author intendeth that the point had been controverted, but thereby, except it be in this ſection where formerly he delivered his opinion as hath been ſaid, he tacitly inſinuateth his own judgment which in all the reſt holdeth for good law and warranted by good Authorities throughout his three books, which kind of ſpeech and the like I have collected together, as it appeareth by the ſections in (m) the margent.

(m) Sect.40.119.131.136 137. 138. 141. 145. 148. 156. 170. 179. 192. 202. 227. 234. 269. 336. 339. 357. 400. 435. 436. 440. 443. 460. 462. 478. 501. 503. 506. 522. 523. 524. 534. 576. 601. 633. 634. 640. 642. 643. 644. 646. 658. 675. 689. 721. 723. 726. 730. 731. 733 734.

¶ *Ideo quære.* This Quære is not in the original edition of Littleton, and therefore to be rejected.

And ſome have ſaid that in divers caſes a man ſhall by having of iſſue be tenant by the curteſie where a woman ſhall not be endowed. And therefore they ſay if lands be given to two women and to the heirs of their two bodies begotten, and one of them take husband and have iſſue and die, the inheritances being ſeveral the husband ſhall be tenant by the curteſie, as it is adjudged 7. E. 3. and in other books (m) this judgment is cited and allowed. But certain it is, That if land be given to two men and to the heirs of their two bodies begotten, and the one taketh wife and dieth, ſhe ſhall not be endowed, for no eſtate in the land is altered by that marriage. But I leave the reader to his own opinion or rather to ſuſpend it untill he come

7.E.3.6.

(m) 17.E.3.52.

to the proper place in the next chapter. If lands holden of the King by Knights ſervice in capite deſcend to a woman, and after office found ſhe intrude and taketh husband and hath iſſue. In this caſe the husband ſhall be tenant by the curteſie; and yet if the heir male after office in the like caſe intruded and taketh wife, his wife ſhall not be endowed, for ſo it is provided by the ſtatute of Prærogativa regis cap. 13. that in that caſe there accrue to the heir no freehold, nor dower to the wife, which by interpretation is as much to ſay, that the heir ſhall have no freehold as to this reſpect to give any dower to his wife. If a man marry the niece of the King by licence and hath iſſue by her and after lands deſcend to the niece and the husband enter, the niece dieth, he ſhall be tenant by the curteſie of this land, and the King upon any office found ſhall not evict it from him, becauſe by the marriage, the niece was infranchiſed during the coverture. But if a free woman marry the Villain of the King by licence, and Lands deſcend to the villain, the villain dieth, the wife ſhall not be endowed, but upon an office found the King ſhall have the land, for a Villain remained ſtill a Villain to the King. A woman (n) taketh husband, and hath iſſue, lands deſcend to the wife, the husband enters, and after the wife is found an Ideot by office, the lands ſhall be ſeiſed by the King, for the title of the tenancy by the curteſie, and of the King begin at one inſtant, and the title of the King ſhall be preferred. A man ſhall be Tenant by the curteſie of a Caſtle (o) which ſerveth for the publick defence of the Realm, but a woman ſhall not be endowed thereof, as ſhall be ſaid more at large hereafter.

Prærog. regis ca. 13.

33. E. 3. tit. Travers 36.

(n) Pl. Com. Dame Hales Caſe 163.

(o) Magna Carta 30. E. 1. Dower 81. b. 17. H. 3. Dower. Bract. lib. 2. fol. 46. & 314

A man ſhall be tenant by the curteſie by a Common ſaunz nomber, but a woman ſhall not be endowed thereof, becauſe it cannot be divided. A man ſhall be Tenant by the curteſie (p) of a houſe that is Caput Baroniæ, or Comitatus: But it appeareth by 4. H. 3. Dower 180. that a woman ſhall not be endowed of it. For the Law reſpecteth Honour and Order. A man is entitled to be Tenant by the curteſie, and maketh a feoffment in fee upon condition, and entreth for the condition broken, and then his wife dieth, he ſhall not be Tenant by the curteſie, becauſe albeit the ſtate given by the feoffment be conditional, yet his title to be tenant by the curteſie was inclufively abſolutely extinct by the feoffment, for the condition was not annexed to it. As if the Lord diſſeiſe the tenant, and maketh a feoffment in fee of land upon condition, and entreth for the condition broken, yet the Seigniory is extinct, for that was inclufively extinct by the feoffment. See more of Tenant by courteſie, Section 52.

(p) 4. H. 3. dower 180. Bract. fol. 93. Fleta lib. 5. cap. 23. 2. E. 2. dower 123. 3. E. 3. dower B. 102. 9. H. 7. 1. 30. E. 3.

Chap. 5. Sect. 36.

Dower.

Tenant en Dower. Tenens in dote. Dos, Dower in the common Law (q) is taken for that Portion of Lands, or Tenements which the wife hath for terme of her life of the Lands or Tenements of her husbands after his deceaſe for the ſuſtenance of her ſelf, and the nurture and education of her children. Propter onus matrimonii & ad ſuſtentationem uxoris & educationem liberorum cum fuerint procreati ſi vir præmoriatur: & hoc proprie dicitur Dos mulieris ſecundum conſuetudinem Anglicanam. And Dos is derived ex donatione, & eſt

(q) Lib. rub. cap. 70. Glanvil lib. 6. cap. 1. Bract. lib. 2. fol. 92. Brit. cap. 101. Fleta lib. 5. cap. 22.

Tenant en Dower eſt lou home eſt ſeiſie de certaine terres ou Tenements en fee ſimple, taile general, ou come heire de le taile ſpeciall, & prent feme, & debie, la feme apres le deceſſe de la baron ſerra endow de la tierce part de tiels terres & tenements que fueront a ſa Baron en aſcun temps du-

Tenant in Dower is where a man is ſeiſed of certain Lands or Tenements in fee ſimple, fee taile general, or as heir in ſpecial taile, and taketh a wife, and dieth, the wife after the deceaſe of her husband ſhall be endowed of the third part of ſuch lands and tenements as were her husbands at any time during the coverture,

rant

rant le coverture, a aver ẽ tener a meſme la feme en ſeveraltie per metes ẽ bounds pur term de ſa vie, le quel el avoit iſſue per ſa baron ou ne-my, ẽ de quel age que la feme ſoit, iſſint que el paſſe lage de neuf ans al temps de le mort ſa baron, car il covient que el ſoit paſſe lage de neuf ans al temps del mort ſa baron, ou autrement el ne ſerra my endow.

To have and to hold to the ſame wife in ſeveralty by metes and bounds for term of her life whether ſhe hath iſſue by her huſband or no, and of what age ſoever the wife be, ſo as ſhe be paſt the age of nine years at the time of the death of her huſband, for ſhe muſt be above nine years old, at the time of the deceaſe of her husband, otherwiſe ſhe ſhall not be endowed.

quaſi donarium, becauſe either the Law it ſelf doth (without any gift) or the husband himſelf giveth it to her, as ſhall be ſaid hereafter. And at this day Dos or Dower is not taken by the profeſſors of the Common law, either for the land which the wife bringeth with her in marriage to her husband, for then it is either called in Frankmarriage or in marriage, as hath been ſaid, nor for the portion of money or other goods or chattels, which ſhe bringeth with her in marriage, for that is called her marriage Portion. And yet of ancient time (r) Dos mulieris, the Dower or Dowrie of the Woman was alſo applyed to them. But it is commonly taken for her third part which ſhe hath of her husbands lands or tenements.

(r) Britton cap. 101. Bracton lib.2.fo.92. Glanvil lib.6.c.2.1.lib.7. ca.1.Lib.2.fol.93. Bingham's caſe. 4.H.3. dowre 179.

In Domeſday, Dos is called Maritagium.

To the conſummation of this Dower three things are neceſſary. Viz. marriage, ſeiſin and the death of her husband.

Dos (ſ) the very name doth import a freedom, for the law doth give her therewith many freedoms: Secundum conſuetudinem regni mulieris viduæ, &c. debent eſſe quietæ de tallagiis, &c. And tenant in Dower ſhall not be diſtreyned for the debt due to the King by the husband in his life time in the lands which ſhe held in Dower. And other privileges ſhe hath; Of all which Ockam yeelds the reaſon, Doti ejus parcatur quia præmium pudoris eſt.

(ſ) Clauſ.11.H.3.nu.17. Regiſt.142.143. F.N.B.150. Ockham fol.40.

¶ *Lon home.* If the husband be an alien (t) the wife ſhall not be endowed. So if the husband be the Kings Villain, the wife ſhall not to be endowed, (as hath been ſaid) but if the husband be a Villain to a common perſon, the wife ſhall be endowed if ſhe be intitled to Dower before the entrie of the Lord. And ſo if a freeman take a nief to wife and dieth ſhe ſhall be endowed. The wife of an Idiot. non Compos mentis, outlawed, or attainted of felony or treſpaſs, attainted of hereſie, præmunire, or the like, ſhall be indowed. But if the husband be attainted of treaſon, albeit it be treaſon done after the title of Dower ſhe ſhall not be endowed, as ſhall be ſaid hereafter.

(t) Bract.fol.298.19.F.2. dower 171. Dame Hales caſe. 13.E.3.dower Statham.13.E.1.tit. dower.

¶ *Seiſe.* Here this word (ſeiſed) extendeth it ſelf as well to a ſeiſon in Law, or a civil ſeiſon, as to a ſeiſon in deed, which is a natural ſeiſon; but ſeiſed he muſt be either the one way or the other during the coverture. For a woman ſhall be endowed of a ſeiſon in law. As where Lands or Tenements deſcend to the husband, before entry, he hath but a ſeiſon in law, and yet the wife ſhall be endowed, albeit it be not reduced to an actual poſſeſſion, for it lieth not in the power of the wife to bring it to be an actual ſeiſon, as the husband may do of his wifes land, when he is to be tenant by curteſie, which is worthy the obſervation. And yet of every ſeiſon in law, or actual ſeiſon of lands or Tenements, a woman ſhall not be endowed. For example, If there be grandfather, father, and ſon, and the grandfather is ſeiſed of three Acres of land in fee, and taketh wife and dyeth, this land deſcendeth to the father, who dieth either before or after entry, now is the wife of the father dowable. The father dieth and the wife of the grand father is endowed of one acre and dieth, the wife of the father ſhall be endowed only of the two acres reſtone, for the Dower of the grandmother is paramount the title of the wife of the father, and the ſeiſon of the father which deſcended to him (be it in law or actual) is defeated, and now upon the matter the father had but a reverſion expectant upon a freehold, and in that caſe, Dos de dote peti non debet; although the wife of the grandfather dieth living the fathers wife. And here note a diverſity (w) between a Deſcent and a Purchaſe. For in the caſe aforeſaid, if the grandfather had infeoffed the father, or made a gift in taile unto him, there in the caſe abovesaid, the wife of the father, after the deceaſe of the grandfathers wife ſhould have been endowed of that part aſſigned to the grand-

(u) 43.E.3.32.45.E.3.25 9.E.3.4.F.N.B. 149. 8.E.3. tit. Aſſ. 393. 19.E.2. Dower 170. 23. E. 3. dower 30.

(w) 5. E.3.tit. Voucher 249. Paris caſe. 9.E.3.4.

mother, and the reaſon of this diverſitie is, for that the ſeiſon that deſcended after the deceaſe of the grandfather to the father is avoided by the indowment of the grandmother whoſe title was conſummate by the death of the grandfather. But in the caſe of the purchaſe or gift that took effect in the life of the grandfather (before the title of Dower of the grandmother was conſummate) is not defeated but only quoad the grandmother, and in that caſe there ſhall be Dos de dote. And yet there is another diverſitie (x) where the wife of the father is firſt indowed, and where the wife of the grandfather, for in the ſame caſe after the deceaſe of the grandfather and father the ſon entreth and indoweth his mother of a third part, againſt whom the grandmother recovereth a third part and dieth, the mother ſhall enter again into the land recovered by the grandmother, becauſe ſhe had in it an eſtate for term of her life, and the eſtate for the life of the grandmother is leſſer in the eye of the Law, as to her than her own life. Alſo the husband (y) may be ſeiſed in his Demeſne, as of fee abſolutely, yet the woman ſhall not be indowed, as ſhe ſhall not be indowed both of the land given in exchange, and of the land taken in exchange, and yet the husband was ſeiſed of both, but ſhe may have her election to be indowed of which ſhe will.

(x) 8.E.3.tit.Aſſ.393. 13.R.2.Dower 55. 22.E.3.5.8.E.3.3. 7.H.6.4.

(y) 6.E.3.50.F.N.B.149.

Alſo of a ſeiſon for an inſtant a woman ſhall not be indowed, As if Ceſtuy que uſe (z) after the ſtatute of 1.R. 3. and before the ſtatute of 27.H.8. had made a feoffment in fee, his wife ſhould not be indowed.

(z) 27.H.8.23.F.N.B. 17.H.3.Dower 192.

Likewiſe if two joyntenants be in fee, and the one maketh a feoffment in fee, his wife ſhall not be indowed. And ſo if the Conuſee of a fine doth grant and render the land to the Conuſor, the wife of the conuſee ſhall not be indowed, for it is not poſſible that the husband could have indowed his wife of ſuch an eſtate as the uſual pleading is, Lib. intrat' 225. Quia dicit quod W. quondam vir ſuus nunquam fuit ſeiſitus de tenementis prædictis de tali ſtatu ita quod eandem A. inde dotaſſe potuit.

¶ *Des terres ou tenements.* Of a caſtle that is maintained for the neceſſary defence of the Realm a woman ſhall not be indowed, becauſe it ought not to be divided, and the publick ſhall be preferred before the private. But of a caſtle that is only maintained for the private uſe and habitation of the owner, a woman ſhall be indowed. And ſo it was adjudged in the Court of (a) common Pleas, where in a writ of Dower the demand was, De tertia parte Caſtri de Hilderker in Comitatu Northumb. And the Statute of Magna Charta cap. 7. whereby it is provided, niſi domus illa ſit Caſtrum, is to be underſtood, a caſtle maintained for the neceſſary and publick defence of the Realm. And this agreeth with ancient Records, (b) (albeit in the argument of the ſaid caſe they were not vouched) the effect whereof be, Non debent mulieribus aſſignari in dotem caſtra quæ fuerunt virorum ſuorum, & quæ de guerra exiſtunt, vel etiam homagia & ſervicia aliquorum de guerra exiſtentia. Wherein it is to be obſerved, That the law is not ſatisfied with the names of things, or nominatives, but with things real and ſubſtantial. But of the principal Manſion, or capital Meſſuage, the wife ſhall be indowed, (c) ſi non ſit caput Comitatus, ſive Baroniæ, for the honor of the Realm, or (as hath been ſaid) a caſtle for the publick defence of the Realm. And ſo are the old books to be intended, as it was reſolved Tr. 17. Eliz. in the Court of common Pleas, which I heard and obſerved. And of an eſtate taile in lands determined, a woman ſhall be indowed in the like manner and form as a man ſhall be Tenant by the curteſie mutatis mutandis.

Vide Sect. 342.

(a) Paſc 13.Eliz.Com. Banco. Bract. fol. 96. Brit.ca.103.Flet.l.5.c.23 30.E.1.tit.Dower 81.b. 30.E.1.Vouch.298. 17.H.3.192.8.H.3.Dower 196.8.H.3.lib.194.

(b) Pat.1.E.1.par.1.m.17 Eſch.4.E.1.nu.88.

(c) Bract.l.2.f.93.Brit.c. 103.Fleta lib.5.ca.22. Trin.17.El.in Bom.Ban.

¶ *En fee ſimple, fee taile general, &c.* If a man be Tenant in fee taile general, (d) and make a feoffment in fee, and taketh back an eſtate to him and to his wife, and to the heirs of their two bodies, and they have iſſue, and the wife dieth, the husband taketh another wife, and dieth, the wife ſhall not be indowed, for during the coverture, he was ſeiſed of an eſtate taile ſpecial, and yet the iſſue which the ſecond wife may have, by poſſibility may inherit.

(d) 41.E.3.30.44.E.3. 26.30.H.8.Dier.41.

The ſame law it is, if in this caſe he had taken back an eſtate in fee ſimple, and after had taken wife and had iſſue by her; yet ſhe ſhall not be indowed, for that the fee ſimple is vaniſhed by the remitter, and her iſſue hath the land by force of the entaile. But in that caſe tenant cannot plead, that the husband was never ſeiſed of ſuch an eſtate whereof the demandant might be indowed, but he muſt plead the ſpecial matter.

So. H.8. Dier. 41.

¶ *Et prent feme.* If a man be ſo ſeiſed as is aforeſaid, taketh an Alien to wife, and dieth, ſhe ſhall no be indowed: but if the king take an alien born, and dieth, ſhe ſhall be indowed by the law of the Crown. And Edmond the brother of King Edward the firſt, married the Queen of Navarre, and died, and it was reſolved (e) by all the Judges, that ſhe ſhould be indowed of the third part of all the lands whereof her husband was ſeiſed in fee.

(e) Rot.Parl.26.E.1. Rot.1.

If a Jew born in England taketh to wife a Jew born alſo in England; the husband is converted to the Chriſtian faith, purchaſeth lands, and inveſteth another, and dieth, the wife

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brought a writ of Dower, and was barred of her Dower, and the reason yielded in the record (f) is this, Quia verò contra justitiam est, quod ipsa dotem petat vel habeat de Tenemento quod fuit viri sui ex quo in conversione sua noluit cum eo adhærere & cum eo convert'. (f) Pas. clauſ. 18. H. 3 m. 17.

¶ *Del tierce part de tiels Terres & Tenements per ſeveraltie per metes & bonds*, Albeit of many inheritances that be entire, whereof no diviſion can be made by metes and bonds, a woman cannot be endowed of the thing it ſelf, yet a woman (g) ſhall be endowed thereof in a ſpecial and certain manner. As of a Mill a woman ſhall not be endowed by Metes and Bounds, nor in common with the heir, but either ſhe may be endowed of the third tolle diſh, or de integro molendino per quemlibet 3. menſem. And ſo of a Millein, (h) either the third dales work, or every third week or moneth. A woman ſhall be endowed of the third part of the profit of ſtallage, of the third part of the profits of a faire, of the third part of the profits of the office of the Marſhalſie, of the (i) third part of the profits of the keeping of a Park. Of the third part of the profit of a dove-houſe; and likewiſe of the third part of a Piſcary, (k) viz. tertium piſcem, vel jactum retis tertium. Of the third preſentation to an Advowſon. A writ of Dower lieth de 3. parte exituum provenientium de cuſtodia gaolæ Abbathiæ Weſtminſt'. And herewith agreeth reverend antiquitie. De (l) nullo quod eſt ſua natura indiviſible, & ſecationem ſive diviſionem non patitur nullam partem habebit, ſed ſatisfaciat ei ad valentiam. Of the third part of profits of Courts, (m) fines, heriots, &c. Alſo a woman ſhall be endowed of tithes. And the ſureſt indowment of tithes, is of the third Sheaf, for what land ſhall be ſown is uncertain. (g) Bract. lib. 2. fo. 97. b. 23. H. 3. tit. Aſſ. 435. F. N. B. 149. 45. E. 3. Dowef 50 (h) 2. H. 6. 11. Bract. lib 2. fo. 97. Brit. 247. 11. E. 3. tit. Dower 85. 15. E. 3. ibid. 81. 2. E 3. 57. F. N. B. 8. k. (i) 4. E. 2. Tr. 233. 26. E. 3. 58. 45. E. 3. Dower. 50. (k) Bract. 98. 208. Brit. 247. Flet. lib. 5. c. 23. 17. E 2. dower 104. 163. 19. E. 3 Quar. Imp. 154. 7. E. 3. 7. (l) Bract. 97. Brit. 146. 147. (m) Lib. Intr. Judgm. 18. fo. 230. Lib. 11. fo. 25. 26. Harpers caſe.

But in ſome caſes of lands and tenements with are divisible, and which the heir of the husband ſhall inherit, yet the husband ſhall not be indowed. As if the husband (n) maketh a leaſe for life of certain lands, reſerving a rent to him and his heirs, and he taketh a wife and dieth, the wife ſhall not be endowed, neither of the reverſion (albeit it is within theſe words Tenements) becauſe there was no ſeiſin in deed or in law, of the freehold nor of the rent, becauſe the husband had but a particular eſtate therein, and no fee ſimple. But if the husband maketh a leaſe for years, reſerving a rent, and taketh wife, the husband dieth, the wife ſhall be endowed of the third part of the reverſion by metes and bonds, together with the third part of the rent, and execution ſhall not ceaſe during the years. And herewith agreeth the common experience at this day. But if the husband maketh a gift in tail, reſerving a rent to him and to his heirs, and after the Donor taketh wife and dieth, the wife ſhall be endowed of this rent, becauſe it is a rent in fee, and by poſſibility may continue for ever. (n) 28. Aſſ. 3. 8. R. 2. dower 184. 1. E. 6. dow. B. 89. acr. Vid. 1. E. 6. B. 89.

Of a Common certain a woman ſhall be endowed, but of a Common ſans nomber en groſſe ſhe ſhall not be endowed, as hath been ſaid before. And ſo of a rent ſervice, rent charge, and rent ſeck, ſhe ſhall not be endowed: but of an annuity that chargeth only the perſon, and iſſueth not out of any lands or tenements, ſhe ſhall not be endowed. But if the freehold of the rents, common, &c. were ſuſpended before the coverture, and ſo continue during the coverture, ſhe ſhall not be endowed of them. If after the coverture the husband doth extinguiſh them by releaſe or otherwiſe, yet ſhe ſhall be endowed of them; for as to her dower they in the eye of the law have continuance. Lib. 7. fo. 38. Lillingſtons caſe. Lib. 6 fo. 78. Seig. Aburganies caſe.

If the wife be intituled to have dower of three acres of marſh, every one of the value of twelve pence, the heir by his induſtrie and charge maketh it good Meadow, every acre of the value of ten ſhillings, the wife ſhall have her dower according to the improved value, and not according to the value as it was in her husbands time: for her title is the quantity of the land, viz. one juſt third part.

And the like law it is, if the heir improve the value of the land by building: and on the other ſides, if the value be impaired in the time of the heir, ſhe ſhall be indowed according to the value at the time of the aſſignment, and not according to the value as it was in the time of her husband. V. 30. E. 1. Vouch. 298.

¶ *Aſcuns temps durant le coverture.* For the better underſtanding whereof it is to be known, that (as hath been ſaid) to dower three things do belong, viz. marriage, ſeiſin, and the death of the husband. Concerning the ſeiſin, it is not neceſſary that the ſame ſhould continue during the coverture, for albeit the husband alieneth the lands or tenements, or extinguiſheth the rents or commons, &c. yet the woman ſhall be endowed. But it is neceſſary that the marriage doe continue, for if that be diſſolved the dower ceaſeth, ubi nullum matrimonium, ibi nulla dos. But this is to be underſtood when the husband and wife is divorced à vinculo matrimonii, as in caſe of precontract, conſanguinity, affinity, &c. and not à menſa & thoro only, as for adulterie. And yet it is ſaid, that if the aſſignment of dower ad oſtium eccleſiæ be ſpecified, viz. That notwithſtanding any divorce ſhall happen, yet that ſhe ſhall hold it for her life, that this is good. Bract. 92. Brit. cap. 101. Brit. cap. eodem.

If the wife elope (o) from her husband, that is, if the wife leave her husband, and goeth away and tarrieth with her adulterer, ſhe ſhall loſe her dower until her husband willingly without (o) W. 2. ca. 34. Lib. Intr. 224. Fleta. lib. 5. c. 22. Br. c. 109. Mirror c. 2. 5. ſect. 5

out coertion eccleſiaſtical be reconciled unto her, and permit her to cohabit with him, all which is comprehended ſhortly in two Hexameters, Sponte virum fugiens mulier & adultera facta, Dote ſua cæreat, niſi ſponſi ſponte retracta. And (p) if ſhe goeth willingly with or to the adowterer, this is a departure and a tarrying, albeit ſhe remaineth not continually with the adowterer, or if ſhe tarryeth with him againſt her will, or if he turn her away, or if ſhe cohabit with her husband, by the cenſures of the Church, in all theſe caſes ſhe loſeth her dowrie. But ſee notable matter hereof in the expoſition upon the ſtatute of W.2.cap.34.

(p) 3.E.3.2.6.E.3.29. 9.E.3.29.19.E.3.Dower. 94.43.E.3.19. Vid.Fitz.N.B.150.h. 8.E.2.Dower 193.

¶ *En ſeveraltie per metes & bonds.* And yet in ſome caſes where the husband was ſole ſeiſed, the wife ſhall not be endowed in ſeveralty by metes and bonds. As for example, (q) If a man ſeiſed of lands in fee, took a wife, and infeoffed eight perſons, a writ of Dower was brought againſt theſe eight perſons, and two confeſs the Action, and the other ſix plead in barr, and deſcend to iſſue, the demandant ſhall have judgment to recover the third part of two parts of the land, in eight parts to be divided, and after the iſſue being found for the demandant againſt the ſix, the demandant ſhall have judgment to recover againſt them the third part of ſix parts of the ſame lands, in eight parts to be divided, which is worthy the obſervation. But of this more ſhall be afterwards ſaid in this Chapter.

(q) M.2.& 3.Eliz. Dier 187.b. 10.Aſſ.p.217.E.3.4. Tr.10.H.5.Rot.447.

But regularly Littletons words are to be intended, where the husband was ſole ſeiſed, for where he was ſeiſed in common, there ſhe cannot be endowed by metes and bonds, as it appeareth in this chapter, Sect. 44. Nota, the endowments by metes and bonds, according to the common right, is more beneficial to the wife, than to be endowed againſt common right, for there ſhe ſhall hold the land charged, in reſpect of a charge made after her title of Dower.

16.E.3.Dower 133. 10. E.3.31. 17.E.2.Dower.164. 19.E.3.qua.Imp.154. 12.E.4.2. 18.H.6.27.per paſton.

¶ *Le quel el avoit iſſue per ſa baron ou nemy.* Herein the tenant in Dower, as in many other, is preferred before the tenant by the curteſie; But yet this great diſadvantage the wife hath, that ſhe cannot enter into her Dower by the common Law, but is driven to her writ of Dower to recover the ſame, wherein ſometime great delayes are uſed, and therefore the wel adviſed friends of the wife will provide for a joynture to be made to her, as ſhall be ſaid hereafter; For by the Statute of (r) Magna carta cap. 7. ſhe ſhall tarry in the chief houſe of her husband but by the ſpace of fortie daies after the death of her husband, within which time Dower ſhall be aſſigned unto her, unleſs it were formerly aſſigned &c. but of little effect was that act, for that no penaltie was thereby provided if it were not done: which term of 40. daies is in law called Quarentina. But if ſhe marry within the 40. daies ſhe loſeth her Quarentine. But ſome have ſaid that by the ancient law of England the woman ſhould continue a whole year in her husbands houſe, within which time if Dower were not aſſigned, ſhe might recover it: and this certainly was the Law of England before the Conqueſt (ſ) Mulieres viduæ bis ſenos menſes viduas exigunto, atque tum demum cui velint nubant, ſin quæ ante annum nupſerit dote mulctata fortunis omnibus à priore marito relictis privatur. But for the relief of the widow it was provided by the Statute of Merton made in Anno 20. H. 3. cap. 1. (which by (t) Bracton is called nova conſtitutio) that the wife ſhall recover dammages in her writ of Dower from the time of the death of her husband. But herein divers things are obſervable. Firſt, in what kind of writ of Dower ſhe ſhall recover her dammages. In a writ for a Dower ad oſtium Eccleſiæ, or ex aſſenſu patris ſhe ſhall recover no dammages, becauſe ſhe may enter, and the words of the Statute be Et dotes ſuas habere non poſſunt ſine placito. Alſo I have read in an ancient and learned reading upon this Statute, that it extendeth only to a writ of Dower, Unde nihil habet, and not to a writ of right of Dower, for in no writ of right dammages are to be recovered. 2. She ſhall recover dammages only when her husband dieth ſeiſed, that is, ſeiſed of the freehold and inheritance, (u) for albeit the husband before the riſe of dower had made a leaſe for years reſerving a Rent, the wife ſhall recover the third part of the reverſion with a third part of the rent and dammages, for the words of the Statute, De quibus viri ſui obierunt ſeiſiti. 3. Some ſay that the Demandant in a writ of Dower, that delayeth her ſelf ſhall not recover dammages, therefore let the Demandant take heed therof. 4. It is neceſſary for the wife after the deceaſe of her husband as ſoon as ſhe can to demand her Dower before good teſtimony, for otherwiſe ſhe may by her own default loſe the value after the deceaſe of her husband and her dammages for detaining of her Dower. For if ſhe bring a writ of Dower againſt the heir, and the heir cometh into the Court upon the ſummons the firſt day, and plead that he hath been alwaies ready and yet is to render Dower, &c. If the wife hath requeſted her Dower, ſhe ſhall loſe the mean values and her dammages, but if ſhe hath requeſted her Dower ſhe may plead it and iſſue may be thereupon taken.

(r) Magna carta cap.6. Fleta lib.3.cap. 23. Bracton lib.2.fol.96. Britton ca.103. 19.H.6.14.6.E.6. – Dyer 76.F.N.B.161. Regiſt.orig.175. 1.Marie Dower 101.

(ſ) Lamb.Sect.110.71.& divers ancient Manuſcripts. See the 2. part of the inſtitutes cap. 7.

(t) Bract.lib.4.312. & lib.2.96. Britton cap.103. Fleta lib. 5.cap.23.

(u) Regiſt.Judic.4. Origin.173. Dyer 11.El.284. Raſt. pl.fo.226.&c. 16.E.3.tit.damages 83. 8. E. 2.ibid.11.

(w) 5.E.3.1.41.E.3. Dower 46. and not in the book at large.

(x) 16.E.3.Dower50. 2.H.4.7.9.H.4.tit.iſſue 132.11.H.4.40. 13.E.4.7.14.H.8.25.b.

But it is holden in ſome books (w) that a requeſt in pays is not ſufficient, and that it is the folly of the wife, that ſhe brought not her writ of Dower ſooner. But the Law and many (x) bookes be againſt it, and the words of the plea (that he hath been alwaies ready, &c.) prove the ſame, and the words of the Statute alſo prove this, Et dotes ſuas habere non poſſunt ſine placito.

And

And the reaſon why tout temps priſt is a good Plea in a writ of Dower brought againſt the heir to bar her of the mean values and damages is, becauſe the heir holdeth by title, and doth no wrong till a demand be made. But in a writ of Aiel, Coſinage, &c. where the land and damages are to be recovered, there ſuch a Plea is not good, for there the Tenant of the land hath no Title, but holdeth the land by wrong, and the Feoffee of the heir cannot at the firſt day plead tout temps priſt, becauſe he had not the land all the time, ſince the death of the Anceſtor. 5. It is to be obſerved that the mean values and damages are to be recovered againſt the Tenant in a writ of Dower, as it appeareth in a notable Record (y) between Belfield and Rowſe, the Tenant as to parcel pleaded Non-tenure, and for the reſidue detainment of Charters, upon which Pleas they were at Iſſue, and both Iſſues found by the Jury againſt the Tenant, and found further that the husband died ſeiſed ſuch a day and year, and had iſſue a ſon, and that the Demandant and the ſon by 6. years after the deceaſe of the husband together took the profits of the Land, and after the ſon ſuch a day and year died without iſſue, after whoſe deceaſe the land deſcended to the Tenant as Uncle and heir to him, by force whereof he entred and took the profits until the purchaſing of the original writ, and found the value of the land by the year, and aſſeſſed damages for the detayning of the Dower, and coſts, and upon this Verdict, after often debating, the Demandant had Judgment to recover her dammages for all the time from the death of her husband without any delalcation. In which caſe many things apparant therein are obſervable. Let the Tenant therefore take heed how he plead falſe Pleas. 6. That this ſtatute of Merton doth extend to Copiholds (z) where the cuſtome is, that women be dowable. 7. That if the wife hath Dower aſsigned to her in Chancery ſhe ſhall have no dammages, (a) for the words of the ſtatute be Et vidua per placitum recuperaverint, &c. So it is if the heir or his feoffee aſsign Dower, and the wife accepteth it ſhe loſeth her dammages.

(y) Mich. 8. & 9. Eliz. rot. 904. in Comm. banc.

(z) Tr. 37. Eliz. lib. 4. fo. 30. b. Shawes caſe.

(a) 43. Aſſ. Pl. 32.

A man ſeiſed of lands in fee taketh a wife and granteth a Rent charge, and after maketh a Feoffment in fee, and taketh back an Eſtate taile and dyeth, the wife recovereth Dower againſt the iſſue in taile by reddition, the wife maketh a ſurmiſe that her husband died ſeiſed, and prayeth a writ to enquire of the dammages, and that is granted to her. In this caſe ſhe holds the land charged with the Rent charge, for by her prayer ſhe accepteth her ſelf dowable of the 2. eſtate, for of the firſt eſtate, whereof ſhe was dowable her husband died not ſeiſed, and ſo ſhe hath concluded her ſelf, wherefore if the Rent charge be more to her detriment than the dammages beneficial to her, it is good for her in that caſe to make no ſuch prayer.

14. H. 8. 28.

¶ *De quel age que la feme ſoit, iſſint que el paſſe lage de neufe ans al temps del mort ſon baron.* Feme wife, here Littleton ſpeaketh of a wife generally, and generally it is to be underſtood aſwel of a wife de facto, as de jure. Therefore if the wife be paſt the age of 9. years, (b) at the time of the death of her husband, ſhe ſhall be endowed, of what age ſoever her husband be, albeit he were but 4 years old. Quia junior non poteſt dotem promereri neque virum ſuſtinere; nec obſtabit mulieri petenti minor ætas viri. Wherein it is to be obſerved, that albeit Conſenſus non concubitus facit matrimonium, and that a woman cannot conſent before 12. nor a man before 14. yet this inchoate and imperfect Marriage (from the which either of the Parties at the age of conſent may diſagree) after the death of the husband ſhall give Dower to the wife, and therefore it is accounted in Law after the death of the husband legitimum matrimonium, a lawful Marriage, quoad dotem. If a man taketh a wife of the age of 7. years, and after alien his Land, and after the Alienation the wife attaineth to the age of 9. years, and after the husband dieth, the wife ſhall be endowed; for albeit ſhe was not abſolutely dowable at the time of the Marriage, yet ſhe was conditionably dowable, viz. if ſhe attained to the age of 9. years before the death of the husband, for by his death the poſsibility of Dower is conſummate.

(b) 3. E. 1. Dower. 172. Itin. North. 8. E. 2. Dower 122. 7. E. 2. Dower 147. 12. E. 2. ibid. 159. 21. E. 3. 28. 15. E. 3. Dower 67. 1. R. 2. Dower 54. 12. H. 4. 3. 35. H. 6. 40. 7. H. 6. 11. 12. 12. H. 4. Doct. & Stud. Fitz. N. B. 149. b. 22. Eliz. Dower. 369. Bract. fol. 92. Fleta lib. 5. ca. 21. Lib. Intrat. fo. 123.

And ſo it is if the husband alien his land and then the wife is attainted of felony, now is ſhe diſabled, but if ſhe be pardoned before the death of the husband, ſhe ſhall be endowed. If the ſon indow his wife at the age of 7. years ex aſſenſu patris, if ſhe before the death of her husband attain to the age of 9. years, the Dower is good. But otherwiſe it is of an original abſolute diſability; as if a man take an Alien to wife, and after the husband alien the Land, and after ſhe is made Denizen, the husband dieth, ſhe ſhall not be endowed becauſe her capicity and poſsibility to be endowed came by the denization, otherwiſe it is if ſhe were naturalized by Act of Parliament, whereof ſee more in the chapter of Villenage.

And the Biſhop upon an iſſue joyned in a writ of Dower, Quod nunquam fuerunt copulati legitimo matrimonio, ought to certifie that they were coupled in lawful Marriage, albeit the man were under fourteen, or the wife above nine, and under twelve. So it is if a Marriage de facto, be voidable by Divorce, in reſpect of Conſanguinity, Affinity, Precontract, or ſuch like, whereby the Marriage might have been diſſolved, and the Parties freed à vinculo matrimonii, yet if the husband die before any divorce, then for that it cannot now be avoyded, this wife de facto ſhall be endowed (c) for this is legitimum matrimonium (as in the other caſe

(c) 10. E. 3. 35. Fleta lib. 5. cap. 22. Brit. cap. 107.

when the wife is infra annos nubiles) quoad dotem. And ſo in a writ of Dower the Biſhop ought to certifie, that they were legitimo matrimonio copulati, according to the words of the writ. And herewith agreeth 10.E.3.35. And (d) Bracton: quamdiu duravit matrimonium, duravit dotis exactio, eo deficiente deficit dotis petitio, &c. poterit tamen replicare contra exceptionem illam, quod ſi aliquando fuit matrimonium propter conſanguinitatem, &c. inter eos accuſatum, nunquam tamen fuit in vita viri ſui ſolutum nec di ortium celebratum. But if they were divorced à vinculo matrimonii in the life of her husband, ſhe loſeth her Dower: Otherwiſe it is if they were divorced (e) Cauſa adulterii, which is but à menſa & thoro, and not à vinculo matrimonii; as it was adjudged. But ſome do hold that a wife de facto ſhall not have an appeale of the death of her husband, but only ſhe that is a wife, De jure in favorem vitæ. Vide 50.E.3.fol.15.28.E.3.92.27.Aſſ. Stamf. Pl. Cor. 59. and that there unques accouple in loyal matrimonie ſhall be taken de jure ſtrictly. And ſo in ſome caſe a wife ſhall have Dower where ſhe cannot have an appeale, (f) and in other caſes ſhe ſhall have an appeale, where ſhe cannot have a writ of Dower, as if ſhe elope, &c. ſhe is barred of her Dower, but not of her appeale, and the reaſon is for that the ſtatute (g) barreth her of her Dower, but not of her appeale. So if the husband be attainted of Treaſon, &c. his wife ſhall not be endowed, and yet if any do kill him, the wife ſhall have an appeale. the reaſon of the diverſity ſhall appear hereafter in this chapter.

(d) Bracton lib.4.fol.304 Britton ibidem. Fleta lib.5.cap.23. 32.E.1.Dyer 156.

(e) Tr.2.la.Rot.1815.in Communi Banco. Inter Stowell & Wikes in Dower.

(f) 50.E.15.b.

(g) W.2.cap.34.

¶ *Apres le mort le baron.* (h) Mortuo viro hinc confirmatur Dos. This is intended of a natural, not of a civil death. For if the husband entred in Religion, (i) the wife ſhall not be endowed until he be naturally dead.

(h) Britton cap.106. Bracton lib.4.fol.301. (i)31.E.3.tit.collution. 29.

And in this chapter Littleton divideth Dower into five parts, viz. Dower by the common law. Secondly, Dower by the cuſtome. Thirdly, Dower ad oſtium Eccleſiæ. Fourthly, Dower ex aſſenſu patris. And fifthly, Dower De la pluis beale. And all theſe Dowers were inſtituted for a competent livelihood for the wife during her life. (k) Propter onus matrimonii & ad ſuſtentationem uxoris & educationem liberorum cum fuerint procreati ſi vir præmoriatur.

(k) Bract.lib.2.cap.39. fol.92.&c. Fleta lib.5.cap.22. Britton cap.101.

Sect. 37.

¶ *Nota per le Common ley la feme navera pur ſa dower forſque* (l) *la tierce part, &c.* This third part is called rationabilis dos, or Dos legitima, becauſe it is the Dower that the common law giveth, rationabilis autem dos eſt cujuſlibet mulieris de quocunque tenemento tertia pars omnium terrarum, & tenementorum quæ vir ſuus tenuit & Dominico ſuo ut de feodo, &c.

(l) Glanvil lib.6.cap.1. Bracton ubi ſupra. Britton ubi ſupra. Fleta ubi ſupra. Mirror cap.1.ſect.3. Magna Carta cap.7.

¶ *Et nota que per le common ley la feme navera pur ſa Dower forſque la tierce part des tenements que fueront a ſa Baron durant le eſpouſels, mes per cuſtome dalcun pais el avera le moitie, & per le cuſtome en alcun Ville & Burgh, el avera lentiertie. Et en touts tiels caſes, el ſerra dit tenant en Dower.*

AND note, that by the common law, the wife ſhall have for her Dower, but the third part of the tenements which were her husbands during the eſpouſal, but by the cuſtom of ſome county ſhe ſhall have the half, and by the cuſtom in ſome Town or Borough, ſhe ſhall have the whole. And in all theſe Caſes ſhe ſhall be called Tenant in Dower.

Pitz.N.B.150.c.

¶ *Mes per Cuſtome daſcun pais el avera le moitie, & per le cuſtome en aſcun Ville & Burgh el avera lentiertie.* Such a (m) cuſtom may extend to a County, City, or an ancient Burgh without queſtion, and ſo this cuſtom as here it appeareth by Littleton, may extend to upland Towns, which are neither Counties, Cities, nor Boroughs. But the ſucer pleading in this and the like caſes, is to lay the cuſtom within a Manor or Seigniory if the truth of the caſe will ſo bear it. By the cuſtome of Gavelkind (n) the wife ſhall be endowed of the moity, ſo long as ſhe keep her ſelf ſole, and without child, which ſhe cannot wave and take her thirds for her life. For in that caſe, Conſuetudo tollit communem legem.

(m)21.E.4.53.54. 7.H.6.26.22.H.6.14. 21.H.7.17.40.Aſſ.27.41. 16.E.2.Preſcription 53. 43.E.3.32.45.Aſſ.8. Dyer 363.39.E.3.2.10. 14.E.3.Bar.277. 13.E.3.tit.Dower,65.

(n) Vide le ſtatute de conſuetud.Kanciæ,&c. Trin.17.E.3.coram rege Kanc. Theſaur.in which Record Senentia ſignifieth Widowhood.

And as cuſtom may enlarge, ſo may cuſtom abridge Dower, and reſtrain it to a fourth part, &c.

Sect.

Sect. 38.

This shall be explained by that which shall be said in the two Sections next ensuing.

¶ Auxy sont deux auters maniers de Dower, ce-stasçavoir, Dower que est appelle Dowment ad ostium Eccleſiæ, & Dower appelle Dowment ex assensu patris.

Also there be two other kinds of Dower, *viz.* Dower which is called Dowment at the Church door, and Dower called Dowment by the fathers assent.

Sect. 39.

¶ Dowment ad ostium Eccleſiæ, est lou home de plein age seisie en fee simple que serra espouse a un feme, quant il vient al huis del monastery ou desglise destre espouse, & la apres affiance enter eux fait, il endowe la feme de sa entier terre ou de la moity, ou dautre meindre parcel, & la overtment declare le quantitie & la certainty de la terre que el avera pur sa Dower, in ceo case la feme, apres le mort le Baron, poit entrer en le dit quantitie de terre dont le Baron luy endowa, sans auter Assignement de nulluy.

Dowment at the Church door, is where a man of full Age seised in Fee simple, who shall be married to a woman, and when he cometh to the Church door to be maried, there, after affiance & troth plight between them, he endoweth the woman of his whole land or of the half or other lesser part thereof, and there openly doth declare the quantity and the certainty of the land which she shall have for her Dower. In this case the wife after the death of the husbād, may enter into the said quantity of land of which her husband endowed her, without other Assignment of any.

¶ If this Dower be made ad ostium castri sive mesuagii, it is not good, but ought to be made, ad ostium Eccleſiæ sive Monasterii. 10.H.3.Dower 200.

Et sciendum est (o) quod hæc constitutio fieri debet in facie Eccleſiæ, & ad ostium Eccleſiæ, non enim valet facta in lecto mortali, vel in camera, vel alibi ubi clandestina fuère conjugia. For the law requires that this and like matters be done publikely and solemnly. (o) Bracton lib.2.cap.18. Mirror.cap.1. Sect.3. & cap.5.10.H.3.Dower 201.F.N.B.150.m.n. Fleta lib.5.cap.22.&c. Britton cap.101.108.&c.

¶ *Ou home de pleine age.* That is of one and twenty years. Anno 9. H. 3. Dower 197. A man of the age of eighteen years took a wife, and by assent of his Guardian endowed her, ad ostium Eccleſiæ, and it was adjudged a good endowment, albeit the husband dyed before the age of one and twenty years; but I hold Littletons opinion to be good law. 9.H.3.Dower 197.

¶ *La apres affiance enter eux.* Affidare est fidem dare. Affiance or sponsality, and is derived of this word spondeo, because they contract themselves together, & ideo sponsalia dicuntur (p) futurarum nuptiarum conventio, & repromissio. But this Dower is ever after marriage solemnized, and therefore this Dower is good without deed, because he cannot make a deed to his wife. For no Assignment of Dower ad ostium Eccleſiæ, can be made before marriage, for that before marriage the woman is not intituled to have Dower. (p) Glanvill.lib.6.ca.1. 40.E.3.43. Vide Vernons case lib. 4. fol.1.2. (q) Glanvill.lib.6.cap.1. Bract.lib.2.cap.38.39.& lib.4.tract.6.cap.1.& 6. Britton cap.101.&c. Fleta lib.5 cap.22.&c.

¶ *De sa entier terre ou de le moitie.* In ancient time (q) as it appeareth by Glanvill

Glanvill lib. 6. cap. 1. It was taken that a man could not have indowed his wife ad oſtium Eccleſiæ of a more than a third part, but of leſs he might. But at this day (r) the Law is taken as Littleton here holdeth. An Aſſignment of Dower (ſ) where the husband was ſole ſeiſed, cannot be made of the third or fourth part in common, but ought to be in ſeverality.

(r) F.N.B. 150.
(ſ) 20.E.3.Barre 132. 45.E.3.6.Fleta lib.5.23.

¶ *Et la overtment* (t) *declare le quantitie & certaintie del terre.* Here be two things that the Law doth delight in, viz. Firſt, to have this and the like openly and ſolemnly done. Secondly to have certainty, which is the mother of Quiet and Repoſe. And this word (moity) abovelaid is to be intended of the half in certainty, and not of the moity in common, which clearly (u) appeareth in that here Littleton ſaith, the quantity and certainty of the Land.

(t) Britton cap.101. Bracton lib.2.cap.18.

(u) Vide 14.H.3. Dower 189. 9.H.3.Dower 190. 8.H.3.Dower 195. F.N.B. 150. 40.E.3.43.

¶ *En ceo caſe la feme poet entrer en le dit quantitie del terre.* And afterwards Sectione 43. he ſaith, Nota, que en touts caſes lou le certaintie appeirt queux terres ou tenements feme avera pur ſa dower, la fem poet entrer apres la mort ſon Baron. It was inſtituted in favour and relief of wives, that a man after marriage might aſſign to his wife certainty of Dower, to the end that the widow ſhould not be driven to a long and chargeable ſuit wherein delay might be uſed, and in the mean time her life ſpent, together with her money alſo. For albeit the (w) Law hath prohibited, Quod vidua poſt mortem mariti ſui non det aliquid pro dote ſua & maneat in capitali meſuagio mariti ſui per quadraginta dies poſt obitum mariti ſui, infra quos dies aſſignetur ei dos ſua, niſi prius ei aſſignata fuerit, &c. & habeat rationabile eſtoverium ſuum interim in Communi, yet becauſe there was no penalty or puniſhment inflicted, the Tenant of the Land may drive her to ſue for her Dower. And this continuance of the widow in the capital Meſſuage, is in law called a Quarentine, Quarentina, for that it is by the ſpace of forty dayes, as is aforeſaid. And if the heir or other Tenant of the land put her out, ſhe may have her writ, De quarentina habenda. If the wife marry within the forty dayes ſhe loſeth her Quarentine, for her habitation in the houſe is perſonal to her, and only given to her in Judgment of Law during her widowhood, albeit the words of the Law be general. And therefore to the end that widows might have certainty of Eſtate, and that they might enter and not be driven to ſuit, the Law hath provided Dower ad oſtium Eccleſiæ, and as it ſhall appear hereafter, Dower ex aſſenſu patris. And laſtly, by making of a Joynture of which (being no Dower but made in ſatisfaction of Dower either before or after Marriage) it is neceſſary that ſomething ſhould be ſaid hereafter in his apt place, for that this now falleth out to be the ſureſt way.

(w) Magna Carta cap.7. See the ſecond part of the Inſtitutes cap 7. Fleta lib.5.cap.23. Britton cap.103. Bract.lib.2.cap.40. Regiſt.175. Vide Dyer 6.E.6.76.b.& 161.2.F.N.B.161. 1.Marie.Br.101.

Nota ſureſt way.

¶ *En touts caſes quant le certeintie appeirt, &c. la feme poet entrer apres le mort del baron.* This is to be intended where the certainty appeareth upon an Aſſignment of Dower ad oſtium Eccleſiæ, or ex aſſenſu patris. For if a woman bring a writ of Dower of ſix pounds Rent charge, and ſhe hath Judgement to recover the third part, albeit it be certain that ſhe ſhall have forty ſhillings, yet ſhe cannot (x) diſtrein for 40. ſhillings, before the Sheriff do deliver the ſame unto her: For whereſoever the writ demands land, Rent, or other things in certain, the Demandant after Judgement may enter or diſtrein before any ſeiſin delivered to him by the Sheriff upon a writ of habere facias ſeiſinam. But in Dower where the writ demandeth nothing in certain, there the Demandant after the Judgement cannot enter or diſtrein until Execution ſued, by which Execution the Sheriff is by the Kings writ to deliver the third part in certainty to the Demandant. And ſo it is when the wife of one Tenant in common demand a third part of a Moity, yet after Judgment ſhe cannot enter until the Sheriff deliver to her the third part, albeit the delivery of the Sheriff ſhall reduce it to no more certainty then it was.

(x) 45.E.3.26. 48.E.3.36.22.Aſſ.87. 39.E.3.12.37.H.6.38. 39.H.6.25. 1.H.5.8.Brev.199. 30.E.3.30.21.E.4.3. Vide lib.1. Shelleys caſe. 40.E.3.22.

¶ *Sauns auter Aſſignement de nulluy.* For as concerning Dower at the common law, there muſt be Aſſignment either by the Sheriff, (as hath been ſaid) by the Kings writ, or elſe by the heir or other Tenant of the land by conſent and agreement between them. To a perfect Aſſignment of Dower eight things are to be obſerved: (a) Firſt, regularly the Aſſignment muſt be certain, as our Author here ſaith.

(a) 8.E.2.Ent.75.40.E.3. 22.45.E.3.5.6.

Secondly, It (b) muſt be either of ſome part of the land whereof ſhe is dowable, or of a Rent or ſome other profit iſſuing out of the ſame, either before Judgment or after, which Rent may be aſſigned to her by parol. But an Aſſignment of other land whereof ſhe is not dowable, or of a Rent iſſuing out of the ſame, is no bar of the Dower.

(b) 1.Mar.Dyer 91. 1.E.2.Dower 146. 28.H.6.2.Dyer 9.El.263. 26.Aſſ.41.31.E.3.Scir. fa.99.33.H.6.2. Vernons caſe.li.4.f.1. 5.E.4.22.

Thirdly, The Aſſignment muſt be abſolute, and not conditional, or ſubject to any limitation.

Fourthly, It muſt be made by him that is Tenant of the land; but herein certain diverſities are to be obſerved.

If two or more be Joyntenants of lands, (c) the one of them may aſſign Dower to the

(c) 7.H.6.34. 10.E.2. Dower 169. 10.E.3.38.

wife

wife of a third part in certainty, and this ſhall bind his companions, becauſe they were compellable to do the ſame by law. But if one of them aſſigne a rent out of the Land to the wife, this ſhall not bind his companion, becauſe he was not compellable by the Law thereunto. If the husband make ſeveral Feoffments of ſeveral parcels, and dieth, and the one Feoffee aſſign Dower to the wife of parcel of land in ſatisfaction of all the Dower which ſhe ought to have in the land of the other feoffees, the other feoffees ſhall take no benefit of this aſſignment, becauſe they are ſtrangers thereunto, and cannot plead the ſame. But in that caſe if the husband dieth ſeiſed of other lands in fee ſimple, and the ſame deſcend to his heir, and the heir endoweth the wife of certain of thoſe lands in full ſatisfaction of all the Dower that ſhe ought to have aſwel in the lands of the feoffees, as in his own lands, this aſſignment is good, and the ſeveral feoffees ſhall take advantage of it. And therefore if the wife bring a writ of Dower againſt any of them, they may vouch the heir, and he may plead the aſſignment which he himſelf hath made in ſafety of himſelf, leſt they ſhould recover in value againſt him, (d) ſo as there is a privity in this reſpect between the heir and the feoffees, and by this means the ſame may be pleaded by the heir that made it. And ſo it is adjudged in our books, which is a notable caſe for many purpoſes.

(d) 33.E.3.tit.Judg.254. 8.E.3.69.17.E.3.58.b. 3.E.3.tit.Dower 76. 3.E.3.Vouch. 96. See the ſecond part of the inſtit. W.1. cap.49.

Fifthly, If aſſignment be made (c) by any diſſeiſor, abator, intruder, or any wrong doer, of lands or tenements, if they came to that eſtate by colluſion and covin between the widow and them, albeit the widow hath juſt cauſe of action, and the aſſignment be indifferently made after iudgment by the Sheriff of an equal third part, yet ſhall the diſſeiſee, &c. avoid it, for covin in this caſe ſhall ſuffocate the right that appertained to her, and ſo the wrongful manner ſhall avoid the matter that is tawful.

(e) 25.Aſſ.p.1.44.Aſſ.29. 44.E.3.46.27.Aſſ.74. 11.H.4.60.15.E.4.4. 19.H.8.1. 1.tit.83.151.

Sixthly, An aſſignment by (f) a diſſeiſor, abator, intrudor, &c. if there be no covin, is good, unleſs it be prejudicial to the diſſeiſee, &c. As if the husband (g) infeoffeth the younger ſon with warranty, the eldeſt ſon diſſeiſe the youngeſt ſon, and endow the widow, in this caſe; the younger ſon ſhall avoid this aſſignment, for otherwiſe he ſhall loſe his warranty: but a diſſeiſor, abator, intrudor, &c. cannot aſſign a rent out of the land to her for her Dower, to bind the diſſeiſee, &c.

(f) 12.Aſſ.p.20.21.E.3.12a
(g) 2.E.3.tit.Dower 77. 16.E.2.tit.dower Statha

Seventhly, No aſſignment can be made, but by ſuch as have a freehold, (as hath been ſaid) or againſt whom a writ of Dower doth lie, and therefore (h) an aſſignment by a gardian in ſocage is void, but a gardian in chivalry may aſſign Dower, as ſhall be ſaid hereafter, becauſe a writ of dower lieth againſt him, and not againſt a gardian in ſocage.

(h) 31.E.1.Dower 151. 29. Aſſ.68. 15.E.2.Dower.69.

Eighthly, And before the gardian in chivalry enter, the heir within age (i) may aſſign dower, for the gardian may waive the wardſhip. And ſo briefly have you heard, of what, by whom, and to whom the aſſignment muſt be made. But there needeth neither livery of ſeiſin, nor writing, to any aſſignment of Dower, becauſe it is due of common right.

(i) 7. R. 2. admeaſurement 4. F.N.B.148.f.

Sect. 40.

¶ Dowment ex aſſenſu Patris eſt lou le pier eſt ſeiſie de Tenements en fee, & ſon fits & heire apparent, quant il eſt eſpouſe, endowe ſa feme al hupes del Monaſterie ou del Eſglíſe, de parcel de Terres ou Tenements ſon pier de aſſent ſon pier, & aſſign la quantitie & les parcels. En ceo caſe apres le mort le fits,

DOwmẽt by aſſent of the father is, where the father is ſeiſed of tenements in fee, and his ſon and heir apparent when he is married, endoweth his wife at the Monaſtery or Church door, of parcel of his fathers lands or tenements with the aſſent of his father, & aſſigns the quantity and parcels; In this caſe after the death of the

¶ *Ou le piere eſt ſeiſie de Tenements en fee.* To grant for life of a Carue of land, the reverſion to the father in fee, the ſon and heir apparent of the father endoweth his wife of this carue, by the aſſent of the father, the Tenant for life dieth, the husband dieth, the reverſion was a Tenement in the father, and yet this is no good endowment ex aſſenſu Patris, becauſe the father at the time of the aſſent had but a reverſion expectant upon a freehold, whereof he could not have endowed his own wife, and albeit the tenant for life died, living the husband, yet, quod initio non valet, tractu temporis non convalescet

Brit.ca.109. Fleta lib.5. ca.22.23.Bract.lib.5.405 6.E.3.34. F.N.B.150.

valescet. And for the most part Dower ad ostium Ecclesiæ, and ex assensu patris, ensue the nature of a Dower at the common Law. And for these the wife may have a writ of Dower, albeit they be certain, as for the third part at the common Law.

¶ *Et son fits & heir apparent.* It must be such a son and heir apparent, as must continue an heir apparent, and therefore the youngest son and heir apparent, cannot endow his wife ex assensu patris, of lands whereof the father is seised in fee of the nature of Borough English, because the father may have another son, and then the husband is not heir apparent: and it is in respect of the constant and perpetual appearance, that the son and heir apparant may endow his wife of his fathers land. And so it is of lands in Gavel kind: (k) and this is the reason that Dower ex assensu fratris, or consanguinei, is not good, for that albeit he is heir apparent at that time, yet for the common possibilitie that he may have issue, and every issue that the brother or cosin should have afterwards, shall exclude him, he is no such heir apparant as the Law intendeth. (l) But an endowmennt ex assensu matris, is as good as ex assensu patris, because there is an apparance of a constant and perpetual heir. And some have said, that if the father after his assent be attainted of treason or felony, that the wife in that case loseth her Dower, because her husband doth not continue heir.

(k)8.H.3.Dower 193. 9.H.3.Dow.191.11.H.3. Dower F.N.B.150.l. 29.E.3.Dower 134.

(l)F.N.B.150.c.Flet.l.5. cap.22.Bract.lib.4.305. Ambr.Gorges case lib.6. fol.22.

la feme entera en meisme le parcell saunz auter assignement de nulluy. Mes il ad este dit en cest case, que il covient a la feme daver un fait de le pier provant son assent & consent de cel endowment. M.44.E,3.fol.45.

son, the wife shall enter into the same parcel without the assignment of any. But it hath been said in this case, That it behooveth the wife to have a deed of the father to prove his assent and consent to this endowment. *M.* 44.*E.*3.*f.*45.

¶ *Quant il est espouse, endow sa feme.* (m)In this case, albeit the Freehold and Inheritance is in the father, yet in respect (as hath been said) of the constant and perpetual appearance of the heir, the heir apparant doth endow, and the father doth but assent. And therefore where the father did endow the wife of his son and heir apparent, that endowment was holden void, because the husband in that case must endow, and the father assent.

(m)2.H.3.Dower 199. 6.E.3.34. 8.E.2.Dower 154.

And it is holden in 2. H. 3. Dower 199. That if the heir apparent be within age, yet the endowment ex assensu patris is good. Note, Littleton in the case of Dower ad ostium ecclesiæ, doth put the husband of full age, but here of the Dower ex assensu patris, he speaketh generally.

2.H.3.Dower 199.

¶ *Et assigne le quantitie & les parcels.* So as both in Dower ad(n) ostium Ecclesiæ, & ex assensu patris, the certainty must be expressed. And therefore where books speak of a moity, it is intended (as hath been said) of an half in certain.

(n)9.H.3.Dower 190. F.N.B. 150. m.

8.E.2.Dower 154.

¶ *Apres la mort le fitz sa feme entera.* In this case after the death of the husband the wife shall enter, or have a writ of Dower albeit the father be alive.

¶ *Que il covient al feme davor un fait provant sont assent a cel endowment.*

¶ *Un fait.* A deed, factum, this word (Deed) in the understanding of the common Law is an Instrument written in parchment or paper, (o) whereunto ten things are necessarily incident: Viz. First, Writing. Secondly in Parchment or Paper. Thirdly, a personable contract. Fourthly, by a sufficient name. Fifthly, a person able to be contracted with. Sixthly, by a sufficient name. Seventhly, a thing to be contracted for. Eighthly, apt words required by Law. Ninthly, Sealing. And tenthly Delivery. A Deed cannot be written upon wood, leather, cloath, or the like, but only upon parchment or paper, for the writing upon them can be least vitiated, altered, or corrupted.

(o)Bract.li.2.fo.33.&c. & l.5 fo.396.Brit.fol.34. 65.66.101.Flet.l.3.ca.14 & lib.6.ca.32.& li.3.c.3. 4,5,6.

If a deed (p) be alledged in Court or Plea, regularly it must be shewed to the Court, to the end the Court may judge whether there be apt words to make it a good contract according to the rule of Law, whereof more shall be said in the chapter of conditions. But if non est factum be pleaded, because thereby the sealing, delivery, or other matter of fact is denied it shall be tried by the Country. Of Deeds some be indented, and some be Deeds poll. Of indented, some be bipartite, some tripartite, some quadripartite, &c. whereof more shall be said in the chapter of Conditions. Also of Deeds, some be inrolled, and some (q) be not inrolled; if it be inrolled according to the Statute of 27.Hen.8.cap.10. it must be inrolled in parchment for the strength and continuance thereof, and not in paper, and so was it resolved in Parliament by the Judges

(p)4.E.2.Fines 116. 14.E.2.Ley 79.4.E.2. Ley 78.27.H.6.10. 27.H.8.22.F.N.B. 122.I.

(q)Brit.fo.101.Bract.l.2. fol.33. Fleta lib.3.ca.14.

ges in anno 23. Eliz. Now for the reſt of the parts of a Deed; you ſhall read thereof plentifully in our Books, and in my Reports; which by this ſhort inſtruction you ſhall eaſily underſtand.

¶ *Un fait de feoffement.* It is properly called Charta feoffamenti, and yet if ſuch a Deed be denied, the plea is non eſt factum. So as of Deeds ſome concern the realtie, as here a deed of feoffment; ſome the perſonaltie, as a deed of gift of goods, Obligations, Bills &c. And ſome mixt, whereof more ſhall be ſaid in the Chapter of releaſes.

If a man deliver a writing ſealed, to the party to whom it is made, as an eſcrow to be his Deed upon certain conditions, &c. this is an abſolute delivery of the Deed, being made to the party himſelf, for the delivery is ſufficient without ſpeaking of any words (otherwiſe a man that is mute could not deliver a Deed) and tradition is only requiſite, and then when the words are contrary to the Act which is the delivery, the words are of none effect, non quod dictum eſt, ſed quod factum eſt inſpicitur. And herein though there hath been (r) variety of opinions, yet is the Law now ſetled agreeable to judgments in former times, and ſo was it reſolved by the whole Court of Common-pleas. But it may be delivered to a ſtranger, as an eſcrow, &c. becauſe the bare act of delivery to him without words worketh nothing. And this is the ancient diverſitie (ſ) in our Books, the reaſon whereof I have ſeen agreeable with the reaſon of our old books. And as a Deed may be delivered to the party without words, ſo may a Deed be delivered by words without any act of delivery, as if the writing ſealed lyeth upon the table, and the feoffor or obligor ſaith to the feoffee or obligee, Go and take up the ſaid writing, it is ſufficient for you; or it will ſerve the turn, or take it as my deed, or the like words, it is a ſufficient delivery. 35.Aſſ.Pl.11. Tr.29.H.8.Dyer 95. (r)Tr.43.Eliz.inter Haukesby & Lacher in the Kings Bench. Hill.12.Ja.R. in the Common place. (ſ)13.H.8.19.H.8.8. 4.E.3.18.13.H.4.8.

Of Deeds and their diſtinctions you ſhall read excellent matter in antiquitie. (t) Cartarum, alia regia, alia privatorum, & regiarum, alia privata, alia communis, & alia univerſitatis. Privatarum, alia de puro feoffamento & ſimplici, alia de feoffamento conditionali ſive conventionali, alia de re cognitione pura, vel conditionali, alia de quiete clamantia, alia de confirmatione, &c. Verba intentioni non è contra debent inſervire. (t)Bract.lib.2.fol.33.b. Fleta lib.3.cap.14.

Carta non eſt (u) niſi veſtimentum donationis. Carta non eſt niſi veſtimentum orationis. Nemo tenetur armare adverſarium ſuum contra ſe. Scriptum eſt inſtrumentum ad inſtruendum quod mens vult. Carta eſt legatus mentis. (w) Benignæ ſunt faciendæ interpretationes cartarum propter ſimplicitatem laicorum ut res magis valeat quam pereat. Nihil tam (x) conveniens eſt naturali equitati quam voluntatem Domini volentis rem ſuam in alium transferre ratam habere. (u)Fleta lib.6.ca.28. Bracton. Bracton lib.2.fo.34. (w)Bract. lib.2.f.94.95. (x)Idem l.2.fo.18.

Re, verbis, ſcripto, conſenſu, traditione
Junctura veſtes ſumere pacta ſolent. Pl.Com.in Throgmorton caſe.fo.161.b.

Verba cartarum fortius accipiuntur contra proferentem. Generale dictum generaliter eſt intelligendum: Verba debent intelligi ſecundum ſubjectam materiam. Carta de non ente non valet.

Note, the father may (a) make a Deed to the wife of his ſon, and ſo is the Law holden, for that the fathers land by his aſſent is charged with a future freehold whereunto a Deed is requiſite but to a Dower Ad oſtium Eccleſiæ no Deed is requiſite. And here it is not well done of him that made the addition to our Author) to vouche 44. E.3. fo. 45. becauſe the Author himſelf vouched it not, for if he (b) meant to have vouched authorities, he would have vouched more than one in this caſe, and thoſe that (c) he vouched he would have cited truly, but this caſe is miſtaken both in the year and in the leaf, for where it is cited in 44. E. 3. it is in 40. E. 3. and where he ſaith it is fo. 45. it is fo. 43. (a) 3.E.2.Dower 126. 8.E.2.Dower 154. 6.E.3.34.40.E.3.43. (b)11.H.3.Dower 186. 14.H.3.Dower. (c) 2.E.2.Dower 125. Vid.Stat.Walliæ anno 12.E.1.fo.18.in veteri magna carta.

An aſſignment of Dower (d) either ad oſtium eccleſiæ, or ex aſſenſu patris, may be made of more than a third part. But the ancient law was that no greater aſſignment could be made in thoſe caſes but of a third part, but leſs he might, as appeareth in Glanvill. 47.H.3.Dower 174. (d)F.N.B.150.p. Glanvil.lib.6.ca.1.2.3.

Sect. 41.

¶ Et ſi apres le baron et enter eſt agree a aſcun tiel dower de les dits dowers ad oſtium eccleſiæ, &c. donque

And if after the death of her huſband ſhe entreth, & agree to any ſuch dower of the ſaid dowers at the Church door, &c. the

¶ *Et eſt conclude a claimer aſcun auter dower per la common ley.* wherein a diverſity is to be obſerved between a dower ad oſtiū Eccleſiæ, or ex aſſenſu patris, and a joynture

el eſt conclude de claimer aſcun auter dower per le common ley daſcuns terres ou tenements q̃r fuerẽt a ſa dit baron. Mes ſi el voit, el poit refuſer tiel dower ad oſtium eccleſiæ, &c. & donq̃ el poet eſtre endow ſolonque le cours del common ley.

she is concluded to claim any other dower by the Common Law of any the Lands or Tenements which were her husbands, but if she will, she may refuse such dower at the Church dore, &c. & then she may be endowed after the course of the Common law.

Vernons caſe lib.4.fo.1. 1 Marie. Dyer 91. 31.E.3.Scire fac.99. 20.E.4.3.

joynture or eſtate made to the wife in ſatisfaction of her Dower, for one of thoſe Dowers being aſſented unto is a barr of the dower at the Common Law, but a joynture was no barr of her Dower at the Common law. For a right or title that one hath to a freehold cannot be barred by acceptance of collateral ſatisfaction. But a woman cannot have a double dower, viz. ad oſtium Eccleſiæ, &c. and at the Common law, for the wife of one husband can have but one dower. But ſince Littleton wrote, by the Statute of 27. H. 8. if a joyn-

27.H.8.cap 10. (a)12.E.2.Dower.158. 27.H.8.cap.10.verſus finem.

ture be made to (a) the wife, according to the purview of that ſtatute it is a barr of her dower, ſo as the woman ſhall not have both joynture and dower; and to the making of a perfect joynture within that ſtatute ſix things are to be obſerved. Firſt, her joynture by the firſt limitation is to take effect for her life in poſſeſſion or profit preſently after the deceaſe of her husband. Secondly, that it be for the term of her own life, or greater eſtate. Thirdly, it muſt be made to her ſelf, and to no other for her. Fourthly, it muſt be made in ſatisfaction of her whole dower, and not of part of her Dower. Fifthly, it muſt either be expreſſed or averred to be in ſatisfaction of her dower. And ſixthly, it may be made either before or after marriage.

Concerning the firſt, if a man make a Feoffment in fee of Lands or Tenements either before or after marriage to the uſe of the husband for life, and after to the uſe of A. for life, and then to the uſe of the wife for life in ſatisfaction of her dower, this is no joynture within the ſtatute, becauſe by the firſt limitation it was not to take effect in poſſeſſion or profit preſently after the death of her husband. And albeit in that caſe A. ſhould die living the husband, and after the death of the husband the wife entreth, yet this is no barr of her dower, but ſhe ſhall have her dower alſo, becauſe it is not within the ſaid ſtatute, (as it hath been ſaid) by the Common law it was no barr of her dower. 2. It muſt be either in fee taile, or for term of her own life, for an eſtate for life or lives of one or many other, or to her for a hundred or a thouſand years, &c. if ſhe live ſo long, or without ſuch limitation is no barr of her dower, albeit they be expreſly made in ſatisfaction of her dower, Cauſa qua ſupra. 3. If an eſtate be made to others in fee ſimple, or for her life upon truſt, ſo as the eſtate remain in them, albeit it be for her benefit, and by her aſſent, and by expreſs words to be in full ſatisfaction of her dower, yet is this no barr of her Dower. The fourth is ſo plain as it needeth not any example. 5. A

Leake and Randals caſe, lib.4.fo.4.

deviſe by Will cannot be averred to be in ſatisfaction of her dower, unleſs it be ſo expreſſed in the Will. 6 If the joynture be made before marriage, the wife cannot waive it and claim her dower at the Common law, but if it be made after marriage, ſhe may waive the ſame, and

Vid.Vernons caſe ubi ſupra, fo.2.b.

claim her dower. I have touched theſe points the more ſummarily becauſe they are reſolved at large with the reaſons thereof in Vernons caſe ubi ſupra. So as to comprehend all in few words, a joynture, (which in common underſtanding extendeth as well to a ſole eſtate as to a joynt eſtate with her husband) is a competent livelihood of freehold for the wife of lands or Tenements, &c. to take effect preſently in poſſeſſion or profit after deceaſe of the husband for the life of the wife at the leaſt, if ſhe her ſelf be not the cauſe of determination or forfeiture of it.

Dyer 19. Eliz.358.

Which ſee more at large in Vernons caſe ubi ſupra. If a joynture be made to a wife of lands before the Coverture, and after the husband and wife alien by fine thoſe lands ſo conveyed for her joynture, ſhe ſhall not be endowed of any of the other lands of her husband. But if the joynture had been made after marriage, notwithſtanding the alienation by the husband and wife thereof by fine, yet ſeeing her eſtate was originally waivable, and the time of her election came not till after the deceaſe of her husband, ſhe may claim her dower in the reſidue of her lands. But in the other caſe, the joynture of the wife made before marriage was not waivable at all, now

Brit.cap.102,103.

as the dower ad oſtium Eccleſiæ, and ex aſſenſu patris, is better for the wife, becauſe in reſpect of the certainty ſhe may enter, then the dower at the common Law, where ſhe is driven to her real action, and therefore Britton calleth Dower ad oſtium Eccleſiæ, and ex aſſenſu patris eſtabliſhment of Dower by the husband and aſſignment of Dower after his deceaſe (for nothing that is uncertain is eſtabliſhed:) So a joynture (that hath the force of a barr of Dower by the ſaid act of 27 H. 8.) is, as hath been ſaid, more ſure and ſafe for the wife then either Dower

ad

ad ostium Ecclesiæ, or ex assensu patris, for besides it is as certain as those others, and she may enter into it, after the death of her husband and not be driven to her action. She shall not be barred of her Jointure albeit her husband commit treason or felony, as she shall be both of her Dower ad ostium Ecclesiæ, and ex assensu patris by the common Law. But now at this day by the statutes of 1. E. 6. cap. 2. and 5. E. 6. cap. 11. a wife shall not lose any title of Dower which to her was accrued, by the attainder of her husband by any manner of murder or other felony whatsoever. But (a) if the husband be attainted of high treason or petit treason she shall be (b) barred of her Dower at this day, so long as that attainder standeth in force.

Bract. 311. lib. 4. Britton ca. 15.

1. E. 6. ca. 6. 5. E. 6. ca. 11.

(a) Stanford 195. b.
(b) Vid. in the chapter of Garranty. Sect.
(c) Pl. com. 376. b. per Walsh. Vid. Sect. 693. 695. 667. 679.

¶ *Conclude*, commeth of the (c) verb concludo, which is derived of con and claudo to determine, to finish, to shut up, to estoppe or barr a man, to plead or claime any other thing. Vid. Estoppel.

Sect. 42.

¶ ET nota que nul feme serra endow ex assensu patris en le forme avantdit, mes lou sa baron est fits & heire apparant a son pier. Quære de ceux deux cases de dowment ad ostium Ecclesiæ, &c. si la feme al temps del mort sa baron, ne passe lage de ix. ans, si el avera dower ou non.

AND note that no wife shall be endow'd *ex assensu patris* in forme aforesaid, but where her husband is son and heir apparant to his father. *Quære* of these two cases of dowmēt *ad ostium ecclesiæ, &c.* if the wife at the time of the death of her husband be not past the age of 9. years, whether she shal have dower or no

¶ *Nul feme serra endowed, &c.* Of this sufficient hath been said before.

¶ *Quære de ceux deux cases de dowment ad ostium Ecclesiæ, &c.* And it seemeth that these dowers being made by assent, &c. that the same are good albeit the wife be within the age of Nine years, for Consensus tollit errorem. But without question a jointure made to her under or above the age of Nine years, is good.

Sect. 43.

¶ ET nota que en touts cases lou le certainty appiert queux tres ou tenements feme aver pur sa Dower, la le feme poit entrer aps la mort sa baron, sans assignement de nully. Mes lou le certaintie ne appiert, si come destre endow de la tierce part daver en severaltie, ou del moitie solonque le custome de tener

AND note that in al cases, where the certainty appeareth what lands or tenements the wife shall have for her dower, there the wife may enter after the death of her husband without assignment of any, But where the certainty appears not, as to be endowed of the 3. part, to have in severalty, or the moity according to the custom

¶ *ET nota que en touts cases, &c.* In all cases where the demand of the Dower is certain as in case of Dower ad ostium Ecclesiæ or ex assensu patris, there the wife after the death of the husband may enter. But where the demand is uncertain, as in writs of dower at the common Law, there albeit the thing it self be certain, yet shall she not take it without assignment. As if a woman bring a writ of Dower of three shillings rent; albeit she ought to be endowed of one shilling, yet cannot she after judgment distrein for 1 d. ob. pence before assignment, because the demand was uncertain

40. E. 3. 22. 43. 45. E. 3. 14. 20. E. 3. barre 132. 8. E. 2. Entry 75.

certain. And so it is if two tenants in common be, and the wife of one of them bring a writ of Dower to be endowed of a third part of a moitie, and have judgment to recover, yet cannot she enter without assignment, albeit the assignment cannot give her any certainty because her husbands state was in certain. See more of this before Section 39.

en severaltie, en tielz cases il covient que sa dower soit a luy assigne apres le mort del baron, pur ceo que non constat devant assignemēt quel part des terres ou tenements el avera pur sa dower.

to hold in severaltie. In such cases it behoveth that her Dower be assigned unto her after the death of her husband, because it doth not appear before assignment what part of the lands or tenements she shal have for her dower.

Sect. 44.

Of this sufficient hath been said before, and that in this case the wife cannot enter without assignment.

¶ Mes si soient deux jointenants de certain terre en fee, & lun alien ceo que a luy affiert a un auter en fee, que prent feme & puis devie; en ceo cas la feme pur sa dower avera le tierce part de la moitie que sa baron ad purchase, a tener en common (come sa part amountera) ouesque lheire sa baron, & ovesque lauter jointenant que ne aliena pas, pur ceo que en tiel cas sa dower ne poit estre assigne per metes & bounds.

But if there be two jointenāts of certain land in fee, & the one alieneth that which belongeth to him to another in fee, who taketh a wife, and after dieth. In this case the wife for her dower shall have the third part of the moitie which her husband purchased, to hold in common (as her part amounteth) with the heir of her husband, & with the other jointenant, which did not alien. For that in this case her dower cānot be assigned by metes & bounds.

Sect. 45.

¶ The reason of this diversity is for that the jointenant which surviveth claimeth the land by the feoffment, and by survivorshippe, which is above the Title of Dower and may plead the feoffment, made to himself without naming of his compagnion that died, as shall be said hereafter in his proper place, but tenants in common have several Free-holds and Inheritances, and their moities shall descend to their several heirs, & therefore their wives shall be endowed.

¶ Et est assavoir, q̄ la feme ne serra my endow de terres ou tenements q̄ sa baron tient jointment ovesque un auter al temps de son mozant: mes lou il tient en common autrement est, come en le case prochein avantdit.

And it is to be understood that the wife shall not be endowed of lands or tenements wch her husband holdeth joyntly with another at the time of his death: but where he holdeth in common, otherwise it is as in the case next aboveſaid.

Sect.

Sect. 46.

¶ ET eſt aſcavoir que ſi tenant en le taile endowa ſa feme ad oſtium Eccleſiæ; come eſt avantdit ceo ſerbera pur petit ou rien al feme, pur ceo que apres la mort ſa baron, liſſue en le taile puit entrer ſur le poſſeſſion la feme: Et iſſint puit celuy en le reverſ. ſi ne ſoit iſſue en le taile en vie &c.

AND it is to be underſtood, that if tenant in taile endoweth his wife at the Church door, as is aforeſaid, this ſhall little or nothing at all availe the wife, for that, that after the deceaſe of her husband, the iſſue in tail may enter upõ her poſſeſſion, & ſo may he in the reverſion, if there be no iſſue in taile then alive.

¶ The Reaſon of this is, for that tenant in tail is reſtrained by the ſaid ſtatute of 13. E. 1. de conditionalibus. And ſo did our Author take the law in his learned reading. Here our Authors reaſon is à fine, and therefore ſuch an Endowment is not to be made becauſe it is to no end. Vide Sect. 194.

Sect. 47.

¶ AVxy ſi hõe ſeiſi en fee ſimple eſteant deins age endowa ſa feme al huiz del monaſterie ou deglíſe, & devie, & ſa feme enter, en ceo cas iheire la baron luy puit ouſter. Mes autermẽt eſt (cõe il ſemble) lou la pier eſt ſeiſie en fee, & le fits deins age endow ſa feme ex aſſenſu patris, le pier doñs eſteant de plein age.

ALſo if a man ſeiſed in fee ſimple being within age endoweth his wife at the Monaſterie or Church doer, & dieth, and his wife enter, in this caſe the heir of the huſband may out her. But otherwiſe it is, (as it ſeemeth) where the father is ſeiſed in fee, & the ſon within age endoweth his wife *ex aſſenſu patris*, the Father being then of full age.

¶ The reaſon of this diverſitie is for that in the firſt caſe the husband within age is ſeiſed, and therefore he being within age cannot by a voluntary act bind himſelf: otherwiſe it is where he doth an act whereunto he is compellable by law, but in the latter caſe the Father which giveth the aſſent, is ſeiſed of the freehold and Inheritance, and the Son therein hath nothing, and therefore his Heir ſhall not avoid it in reſpect of his Infancy. Vide 9. H. 3. tit. dower 197.

Sect. 48.

¶ AVxy il y ad un auter endowment que eſt appel dowment de la pluis beale. Et ceo eſt come en tiel caſe, que home ſeiſie de xl. acres de terre, & il tient vint

ALſo there is another dower which is called dowment *de la pluis beale*. And this is in caſe where a man is ſeiſed of forty acres of land, and he holdeth twenty acres of

¶ ET *le Seignior de que le terre eſt tenus en Chivalrie enter en les vint acres tenus de luy.* For he is not poſſeſſed as a gardein againſt whom a writ of dower lieth, until he doth enter of the wardſhip of the body he is poſſeſſed before ſeiſure becauſe

cauſe it is tranſitory, but he is not poſſeſſed of the land until he enter becauſe it is permanent. And therefore if he doth not enter, the heir within age may aſſign Dower as hath been ſaid, and as it appeareth afterwards.

Vid. le ſtatut. de bigamis cap. 3.

¶ *Si en tiel caſe el port breve de dower envers le Gardein en Chivalrie.* Albeit(a) the Gardein in Chivalrie of the Grantee of the King of a wardſhip hath but a chattle during the minority of the heir, & the woman ſhall recover a freehold in a writ of Dower, yet after the Gardein as is aforeſaid, hath entred into the land, that writ lieth againſt him, & not againſt the heir who is tenant of the freehold, becauſe the law hath truſted the Gardein to plead for the heir within age, and that is in his cuſtody, & alſo for his own particular intereſt, and by this diverſity all the Books be reconciled.

(a) 44.E.3.13.4.H.6.11. Stanſ.pier.13.6.E.3.15. 16.E.3.breve 657. Temps E.1.breve 863. 11.E.2.breve 473. 45.E.3.5.17. E.3.7c. 2.H.7.17.4.H.7.1. 4.H.7.aid le Roy 33. 38.E.3.13. 9.H.6.6.b.39.E.3.8. 8.E.2.Dower 169. 8.E.2.breve 809. 22.E.4.Dower 16.

8.E.3.52.

So likewiſe if the gardein die, the wife ſhall have a writ of dower againſt his executors, and if there be two Executors, and one of them alone take the profits, the writ of dower ſhall be maintain'd againſt him only. If a man be poſſeſſed of the wardſhip of certain land, either jointly with his wife, yet the writ of Dower lieth againſt the husband only. Gardein in ſocage ſhall not endow her ſelf de la pluis beale without judgment as ſhall be ſaid hereafter.

2.E.2.15.& 31. 38.E.3.37. 47.E.3.9.b.

¶ *Le Gardein en chivalrie poit pleader.* The authority of Littleton is direct that the Gardein may plead this plea. But hereof ariſeth two queſtions. Firſt, whether if the heir be vouched by the tenant in the writ of dower in the ward of the gardein, whether he coming in as Vouchee may plead that plea. The ſecond is whether if the gardein in

acres de les dits xl. acres de terre dun ſervice de chivalrie, & les autres vint acres de terre dun auter en ſocage, & prēt feme, & oūt iſſue fits, & morust, ſon fits eſteant deins lage de xiiii. ans, & le Seignior de que la terre eſt tenus en chivalrie, entre en les xx. acres tenus de luy, & eux ad come gardein en Chivalrie durāt le nonage lenfant, & la mere de lenfant enter en le remnant, & ceo occupie come gardein en ſocage: ſi en tiel caſe le feme port briefe de dower enūs le gardein en chivalrie, deſire endowe de les tenements tenus per ſervice de chivalier en le Court le Roy, ou en auter Court, le gardein en chivalrie puit plede en tiel caſe tout ceſt matter & monſtre coment la feme eſt gardein en ſocage, coment devant eſt dit, & prie q̄ ſerra adjudge per la Court que le feme luy meſme endowera de le pluis beale de les tenements que el ad come gardein en ſocage .lolonque le value de le tierce part

the ſaid forty acres, of one by Knights Service, and the other twenty acres of another in Socage, & taketh wife, & hath iſſue a ſon, and dyeth, his ſon being within the age of fourteen years, and the Lord of whom the Land is holden by Knights ſervice entreth into the twenty acres holden of him, and holdeth them as Gardein in Chivalrie, during the nonage of the infant, and the mother of the infant, entreth into the reſidue, and occupieth it as Gardein in Socage. If in this caſe the Wife bringeth a Writ of dower againſt the gardein in Chivalrie to be endowed of the tenements holden by Knights ſervice, in the Kings Court, or other Court, the gardein in Chivalrie may plead in ſuch caſe all this matter, & ſhew how the wife is Gardein in Socage, as aforeſaid, and pray that it may be adjudged by the Court, that the wife may endow her ſelf *de le pluis beale*, i.e. of the moſt fair, of the tenements which ſhe hath as gardein in So-

que

que el claime daver de les tenements tenus en chivalrie per sa brief de Dower. Et si la feme ceo ne puit dedire, donq̄ le Judgemēt serra fait, que le gardeine en chivalrie tiendra les terres tenus de luy durant le nonage lenfant, quit de la feme, &c.

cage', after the value of the third part which she claims by her writ of dower, to have the tenements holden by Knights Service. And if the wife cannot gainsay this, then the judgement shall be givē, that the gardein in Chivalry shall hold the Lands holden of him during the nōage of the infant, quite from the woman, &c.

socage have not sufficient, as if the Land holden by service of chivalry be thirty Acres, and the lands holden in socage but five Acres, whether she shall be endowed by parcels, viz. to recover five Acres against the Gardein in Chivalry, and to retain five Acres. And as to the first the Gardein shall alwel plead it, when he comes in as Voucher, as when he is Tenant. And as to the second some say that the Demandant in the writ of Dower must have Assets in her hands to the value of her Dower, so as she shall not be partly endowed against the Gardein, and partly retain

5.E.3.60.2.E.3.31. Lib. intrat. Dower fol. 225.a. 18.E.3.4.b.

in her own hands. And they say, that the Judgment should be in part, that is, as to the land in socage in severalty, and as to the Land in chivalry to recover the third part, and compare it to the case in 8. E. 4. 3. that damages shall not be recovered, partly against the Defendant in an appeal, and partly against the Adettors, but entirely either against the one or the other. And Littleton here putteth this case that the Gardein in socage hath Assets in value, and seeing it is a Dower against common Right, or against the Gardein according to common Right. But (a) yet by the book in 25. E. 3. 52. b. and others it appeareth that she may in this very case retain for part, and recover against the Gardein for part.

14.H.7.26.Keble.

Gardein in chivalry (b) shall plead in bar of her Dower, detainment, or eloigning of the body of the ward, because his marriage doth appertain unto him: And if the heir come in (c) as Voucher, he shall plead the same Plea. But he shall not plead detainment of the charters (d) because the charters concerning the Inheritance of the heir, belong not to the Gardein. The Gardein in chivalry (e) may assign Dower of the lands and Tenements he hath in ward, or if he assign a Rent out of those lands in allowance of her Dower, it is good. If the Gardein in chivalry assign too much for her Dower, the heir shall have a writ of Admesurement by the common law. And so (f) if the heir within age assign before the Gardein enter, to the wife too much in the Dower, the Gardein shall have a writ of Admesurement, by the statute of West. 2. cap. 7. And if the heir within age, before the Gardein enter into the land, assign too much in Dower, he himself shall have a writ of Admesurement at full age: And some have said, that in that case he may have it within age. (g) But if the heir (before the Gardein enter) endow the wife of more than she ought, and the Gardein assign over his Estate, his Assignee shall have no writ of Admesurement, because it was a thing in Action. Also the heir shall have an (h) Admesurement, for the Assignment in the life of his Ancestor, by the common law, (i) and a writ of Admesurement lyeth upon an Assignment in Chancery.

(a) 25.E.3.52.b.4.E.2. tit. disseisin.10.Regist. judic. 26. Lib.Intrat.22.16.E.3. breve.657. 20.E.3. Judgment 175.
(b) 7.E.3.57.8.E.3.71.
(c) 17.E.3.58.
(d) 10.E.3.50.6.El.Dy. 230.
(e) 3.E.3.Dower 75. 8.Ed.2.Dower 155. W.2.cap.7.
(f) Bract.li.4.314.Reg. origin.171.Flet.l.5.c.22. 7.E.2.tit.Admes.13. F.N.B.149.
(g) 7.R.2.Admes.4. F.N.B.148.i.c.
(h) 7.R.2.ub.su.F.N.B. 149.2.
(i) 7.R.2.ub.sup.12.H.6. Admes.9.F.N.B.149. 25.E.3.51.

¶ *Donques le judgement serra fait que le gardein en Chivalrie tiendra les Terres tenus de luy durant le nonage lenfant, quite de la feme, &c.*

¶ *Judgement.* Judicium quasi juris dictum, the very voyce of Law and Right, and therefore, Judicium semper pro veritate accipitur. The ancient words of Judgment are very significant. Consideratum est, &c. because that Judgment is ever given by the Court upon due consideration had of the Record before them: And in every Judgment there ought to be three Persons, Actor, Reus, and Judex. Of Judgments some be final, and some not final, whereof you shall read more hereafter. And now to return to our Author, it is material that these words (& cætera) be explained at large, viz. Et quod prædicta A. (the Demandant) capiat de terris hæred' prædicti in custodia sua existen ad valentiam p̄d'. 3. partis cum pertinen tenend' nomine dotis suæ pro præd' 3. parte superius per eam petit. Now some are of opinion, that upon this Judgment the Demandant may not in any sort endow her self of the land, because she cannot do an act to her self, but she shall recoupe the third part of the Profits upon her account, and be endowed against the heir at his full age. But observe what Littleton saith in the next Section: but before you come to that, observe what priviledge the common law

22.E.4.Dow.16.16.E.4. Waste.100.45.E.3.6.

giveth to the land holden by Knights ſervice, viz. that it ſhall not be diſmembred, but the whole Dower taken of the lands holden in Socage, and the reaſon is, for that Knights ſervice is for the defence of the Realm, which is pro bono publico, and therefore to be favoured.

Sect. 49.

ET nota que apres tiel judgment done, la feme puit prender ſes Viſines, & en lour preſens endower luy meſme p metes & Bonds, de la pluis beale part de les tenents que el ad cõe gardein en Socage, dañ & tener a luy pur terme de ſa vie, & tiel Dower eſt appel Dower de la pluis beale.

AND note, That after ſuch a Judgment given, the wife may take her Neighbours, and in their preſence endow her ſelf by Metes and Bonds, of the faireſt part of the Tenements which ſhe hath as gardein in Socage, to have and to hold to her for terme of her life: and this Dower is called *Dower de la pluis beale.*

And the Judgment, viz. Tenend' noie dotis, proveth, that ſhe may have it for terme of her life, for every Dower is for term of life.

Sect. 50.

25.E.3.Dow.69. 26.E.3.tit.Waſt.109.

¶ *Lou le Judgement eſt fait, &c.* For without ſuch a Judgment, as appeareth before, Gardein in Socage cannot endow her ſelf, as likewiſe hath been ſaid before.

Bract.li.5.329.F.N.B. 7.8.

¶ *Ou en auter court.* That is by writ of Right of Dower in the Court of the heir, if he have any, or of the Lord of whom the Land is holden.

¶ ET nota, q̃ tiel Dowment, ne puit eſte, mes lou le judgement eſt fait en le court le Roy, ou en auter court, &c. et ceo eſt pur ſalvation del eſtate del Gardeine in Chivalrie durant le nonage le Enfant.

AN note, that ſuch dowment cannot be but where Judgement is given in the Kings Court, or in ſome other court, &c. and this is for the preſervation of the eſtate of the gardein in Chivalrie, during the nonage of the Infant.

¶ *Et ceo eſt pur ſalvation del eſtate del gardein en Chivalrie, durant le nonage de lenfant.* For the heir (before the entre of the Gardein) cannot plead the ſame Plea, that the Demandant ſhould endow her ſelf de la pluis beale. And the reaſon of this Dower de la pluis beale to be all of the Socage land, was for advancement of Chivalrie for the defence of the Realm.

Sect. 51.

This is manifeſt of it ſelf, and therefore needeth no explanation.

ET iſſint poyes veier cinque manners de Dower, ſ, Dower per le common Ley, Dower per le cuſtome, Dower ad oſtium Eccleſiæ, Dower ex aſſenſu patris, & Dower de la pluis beale.

AND ſo you may ſee five kinds of Dower, *viz.* Dower by the Common Law, Dower by the cuſtome, Dower *ad oſtium Eccleſiæ*, Dower *ex aſſenſu Patris*, and Dower *de la pluis beale.*

Sect. 52.

Sect. 52.

¶ ET memorandū que en chescun case lou home prent feme seisie de tiel estate de tenemēts, &c. issint que issue que il ad per son feme poit p possibilitie enheriter mesmes les tenements de tiel estate que la feme de come heire al feme, en tiel case apres le mort la feme il avera mesmes les Tenements per le curtesie de Angleterre, & autrement nemy.

And *memorandum*, that in every case where a man taketh a wife seised of such an estate of Tenements, &c. as the issue which he hath by his wife may by possibility inherit the same Tenemēts of such an estate as the wife hath, as heir to the wife; In this case after the decease of the wife, he shall have the same tenements by the curtesie of *England*, but otherwise not.

Memorandum, This word doth betoken some excellent point of learning, which our Author hath used in other places, as appeareth in the margent. Sect.234.301.335.

The matter hereof hath been partly explained in the chapter of Tenant by the curtesie. If a man (a) taketh a wife seised of lands or tenements in fee, and hath issue, & after the wife is attainted of felony so as the issue cannot inherit to her, yet he shall be Tenant by the curtesie, in respect of the issue which he had before the felony, and which by possibility might then have inherited. But if the wife had been attainted of felony before the issue, albeit he hath issue afterward, he shall not be Tenant by the curtesie (a) 21.E.3.9.11.H.7. 3.H.7.17.Stamf.195. 27 E.3.77.46.E.3.Pet.10 26.Ass.p.2.13.H.4.8.

¶ *Come heire al feme.* This doth imply (b) a secret of Law, for except the wife be actually seised, the heir shall not (as hath been said) make himself heir to the wife: and this is the reason that a man shall not be Tenant by the curtesie of a seisin in Law. (b) Lib.8.fo.34.in Paines case.

Sect. 53.

¶ ET auxy en chescun case lou le feme prent Baron seisie d tiel estate des Tenements, &c. Issint q si p possibilitie il puissoit happer q si le feme avoit ascun issue p sa baron, & que m issue puissoit per possibilitie enheriter mesmes les Tenements de tiel estate quel baron ad, come heire a l baron, de tiels Tenemēts el aver sa dower, & autrement nemy. Car

And also in every case where a woman taketh a husband seised of such an estate in tenements, &c. so as by possibility it may happen that the wife may have issue by her husband, and that the same issue may by possibility inherit the same Tenements of such an estate as the husband hath, as heir to the Husband. Of such tenements she shall have her dower, & otherwise not. For

¶ *Issint que si per possibilitie il puit happer que le feme avoit ascun issue per son Baron.* Albeit the wife be a hundred years old, or that the husband at his death was but four or seven years old, so as she had no possibility to have issue by him, yet seeing the Law saith, That if the wife be above the age of nine years at the death of her husband, she shall be endowed: and the woman in ancient times have had children at that age, wherunto no woman doth now attain, the Law cannot judge that impossible, which by nature was possible. And in my time, a woman above threescore years old hath had a child, and ideo non definitur 12.H.4.2.7.H.6.11.12.

is

in jure. And for the husbands being of such tender years, he hath habitum; though he hath not potentiam at that time, and therefore his wife shall be endowed.

¶ *Et que mesme lissue puissoit per possibilitie inheriter mesmes les tenements, &c.* A man seised of land in general taile, taketh wife, and after is attainted of Felony, before the said statute of 1. E. 6. the Issue should have inherited, and yet the wife should not have been endowed: For the statute of W. 2. ca. 1. reliveth the issue in taile, but not the wife in that case. But at this day, if the husband be attainted of Felony, the wife shall be endowed, and yet the issue shall not inherit the lands which the father had in fee simple. If the wife elope from her husband, &c. she shall be barred of her Dower, as hath been said, and yet the Issue shall inherit.

si tenemẽts sont dons a un hõe & a les hẽrs que il engendra de corps sa feme, en tiel case la feme nad riẽs en les tenements, & le Baron ad Estate forsque come Donee en special taile; uncore si le Baron deby sans issue, mesme la feme serra endow de mesmẽs les tenemẽts, pur ceo que lissue que el p possibilitie puisſoit aver per mesme l Baron, puisſoit enheriter mesmes les tenements. Mes si la feme deviast, vivant sa Baron, & puis l Baron prist auter feme & morust, la second feme ne serra my endow en cest case, causa qua supra.

if tenements be given to a man, and to the heirs which he shall beget of the body of his wife, in this case the wife hath nothing in the tenements, and the husband hath an estate but as donee in special taile; yet if the husband die without issue, the same wife shall be endowed of the same tenements, because the issue wch she by possibility might have had by the same husband, might have inherited the same tenements, But if the wife dieth, living her husband, & after the husbãd takes another wife & dieth his 2. wife shall not be indowed in this case for the reasõ aforesaid

Sect. 54.

¶ You may easily perceive by the context that this shaft came never out of Littletons Quiver of choice Arrows; And therefore I will leave it, Only for Students sake I will refer them to 5. E. 3. Voucher 249. 8. E. 3. Ass. 393. 4. H. 6. 24. F. N. B. 149.

5. E. 3. Voucher 249.
8. E. 3. Ass. 393.
4. H. 6. 24. F. N. B. 149.

NOta si un home soit seisie de certain terres & prist un feme, & puis aliena mesme la terre ove garrantie, & puis le feoffor, & le feoffee deviont, & le fẽe de le feoffor port un actiõ de dower envers le issue le feoffee, & il vouch l heir le feoffor, & pendant le voucher & nient termine, la feme le feoffee port son action de dower envers le heire le feoffee, & demaunda la tierce part de

NOte if a man be seised of certain lands, and taketh wife, and after alieneth the same land with warranty, & after the feoffor and feoffee die, and the wife of the feoffor bring an action of dower against the issue of the feoffee, and he vouch the heir of the feoffor, and hanging the voucher and undetermined, the wife of the feoffee brings her actiõ of dower against the heir of the feoffee,

de que ſa Baron fuit ſeiſie, & ne voile demaunder le tierce part del eux deux parts de que ſa Baron fuit ſeiſie, fuit adjudge, que el navera Judgement tanque lauter plee fuit determine.

Feoffee, and demand the third part of that whereof her huſband was ſeiſed, and will not demand the third part of theſe two parts of which her huſband was ſeiſed. It was adjudged, that ſhe ſhould have no Judgment until ſuch time as the other plea were determined.

Sect. 55.

ET nota que Vaviſour dit, Que ſi un home ſoit ſeiſie de terre & fait Felonie, & puis alien, & puis eſt attaint, la feme avera bone action de Dower envers le feoffee: Mes ſi ſeit eſchete al Roy, ou al ſeignior, el navera bre de dower, Et ſic vide diverſitatem, & quære inde legem.

And note, *Vaviſor* ſaith, that if a man be ſeiſed of land and cõmitteth felony, and after alieneth, and after is attaint, the wife ſhall have a good action of Dower againſt the feoffee: but if it be eſcheated to the King, or to the Lord, ſhe ſhall not have a Writ of Dower. And ſo ſee the difference, and inquire what the law is herein.

THis is alſo of the new addition, & exploſa eſt hæc opinio, for it is clear in law that the wife at the common law ſhould not have been endowed againſt the Feoffee. For to deter and retain men from committing of Treaſon or Felony, the law hath inflicted five puniſhments upon him that is attainted of Treaſon or Felony. 1. He ſhall loſe his life and that by an infamous death of hanging between heaven and the earth, as unworthy in reſpect of his offence of either. 2. His wife (that is a part of himſelf, (Et erunt animæ duæ in carne una) ſhall loſe her Dower. 3. His blood is corrupted, and his children cannot be heirs to him, and if he be noble or gentle before, he and all his poſterity are by this attainder made ignoble. 4. He ſhall forfeit all his lands and tenements; And 5. all his goods and chattels, and all this is included by the law in the Judgment, Quod ſuſpendatur per collum. But this is not intended of all Felonies, but of felony by ſtealing of goods above the value of 12. pence, and not of petit larceny under the valur. So as the woman ſhall loſe her Dower as well againſt the Feoffee as againſt the Lord by eſcheat. And ſo it was reſolved in the writ of dower brought by Mary Gates late wife of John Gates, who after the coverture had infeoffed Wiſeman in fee, and after committed high Treaſon, and was thereof attainted, that the wife ſhould not be indowed againſt the Feoffee, and in that caſe it was reſolved, that ſo it was at the common law in caſe of Felony. And it is to be underſtood, that the wife ſhall not only loſe her reaſonable Dower at the common law for the Felony of her husband, but alſo her Dower ad oſtium Eccleſiæ, and ex aſſenſu patris for Felony done after the Dower aſsigned, and Dower by cuſtome alſo. And the reaſon of all this is yielded by Littleton himſelf in the chapter of warranties, Section 746. to the end that men ſhould be afraid to commit Felony. But at this day the wife of a man attainted of Felony (as often hath been ſaid) ſhall be endowed by force of the ſtatutes in that caſe provided.

And it appeareth by Britton, Que fem de homicide ne teigne nul dower de tenants que lour fuit aſſigne per lour Barons, ſo as the wife of a Felon attainted by the common law was diſabled to recover Dower ad oſtium Eccleſiæ, and ex aſſenſu patris, as well as her reaſonable Dower which the common law gave her. See in Bracton many bars of Dower as the law was then held.

Vide Sect. 746. Vide Britton ca. 169. l. 1. Bracton title evidens, l. 4 fol. 397. 30. 311. Stanf. pl. cor. 194. 195.

Britton fol. 15. cap. 5.

Vide Sect. 746.

M. 3. & 4. Ph. & Mar. Ro. 760. in com. banco. 8. E. 3. 20. 12. H. 4. 30.

Bracton lib. 4. fol 311.

Vide Sect. 746. Britton cap. de homicide fol. 15. Bracton lib. 4. fol. 308. & Fleta ubi ſupra. & Britton ubi ſupra.

CHAP. 6. Sect. 56.

Tenant a terme de vie.

OR pur terme de vie dun auter home. Now it is to be understood, that if the leſſee in that caſe dieth living Ceſty que vie (that is, he for whoſe life the leaſe was made) he that firſt entreth ſhall hold the land during that other mans life, and he that ſo entreth is with'in Littletons words, viz. tenant pur auter vie, and ſhall be (a) puniſhed for waſte as Tenant pur auter vie, and ſubject to the payment of the Rent reſerved, and is in law called an occupant (occupans) becauſe his title is by the firſt occupation. And ſo if Tenant for his own life grant over his eſtate to another, if the grantee dyeth there ſhall be an occupant. In like manner it is of an eſtate created by law; for if tenant by the curteſie or Tenant in dower grant over his or her eſtate, and the Grantee dieth, there ſhall be an occupant. But againſt the King there ſhall be no occupant, becauſe nullum tempus occurrit Regi. And therefore no man ſhall gain the Kings land by priority of entry. There can be no occupant of any thing that lieth in grant, and that cannot paſs without Deed, becauſe every occupant muſt claim by a que eſtate and over the life of Ce' que vie. It were (c) good to prevent the incertainty of the eſtate of the occupant to adde theſe words, (to have and to hold to him and his heirs during the life of Ce' que vie) and this ſhall prevent the occupant, and yet the Leſſee may aſsign it to whom he will, or if he hath already an eſtate for another mans life without theſe words, then it were good for him to aſsign his eſtate to divers men and their heirs during the life of Ce' que vie.

Bract. lib. 2. ca. 5. & ca. 9. fol. 26. Fleta lib. 3. ca. 12. Britton fol. 83. Bracton lib. 4. fol. 170. Vide Sect. 381.

(a) Vide le Dean de Worceſt. caſe, lib. 6. fo. 37 27. Aſſ. 31. 39. E. 3. 1. 27. H. 6. Recognizance. Statham pl. ultimo. 38. H. 6. 27. Bracton lib. 2. fol. 9. Britton fol. 84. 85.

(b) 27. Aſſ. p. 31. & Pl. com. fol. 28. b. in Colthorſt caſe tit. Barre 303.

(c) Littleton 167. 11. H. 4. 42. 17. E. 3. 48. 39. E. 3. 25. 7. H. 4. 46. 8. H. 4. 15. Dyer. 8. Eliz. 253.

TEnãt pur terme de vie eſt, lou home leſſa terres ou tenements a un auter pur terme de vie le leſſee, ou pur terme de vie dun auter home, en tiel caſe le Leſſee eſt Tenant a terme de vie. Mes per common parlance celuy que tient, pur terme de ſa vie demeſne, eſt appel tenant pur terme de ſa vie, & ceſtuy que tient pur terme dauter vie, eſt appel Tenant pur term dauter vie.

TEnant for term of life is, where a man letteth lands or tenements to another for term of the life of the Leſſee, or for term of the life of another man. In this caſe the Leſſee is Tenant for term of life. But by common ſpeech he which holdeth for term of his own life, is called Tenant for term of his life, and he which holdeth for term of anothers life, is called Tenant for term of another mans life.

(d) Bract. lib. 4. fo. 222. 231. 232. & vid. fo. 136. 137. Fleta lib. 4. ca. 19. 25. 26. 27. 8. E. 3. 54. 55. 21. E. 3. 41. 48. E. 3. 31. 7. E. 4. 28. 21. H. 6. 46. 10. E. 4. 3. F. N. B. 180. lib. 4. 86. 87. in Luttrels caſe.

Note that (d) to every Tenant for life, the law as incident to his eſtate without proviſion of the party giveth him three kind of eſtovers, (that is) housbote which is twofold, viz. eſtoverium ædificandi & ardendi. Ploughbote, that is eſtoverium arandi. And laſtly Haybote, and that is eſtoverium claudendi, and theſe eſtovers muſt be reaſonable, eſtoveria rationabilia. And theſe the leſſee may take upon the land demiſed without any Aſsignment, unleſs he be reſtrained by ſpecial covenant, for modus & conventio vincunt legem. Bote in the Saxon tongue, and eſtovers in the French in this caſe are all of one ſignification, that is, to have compenſation or ſatisfaction for theſe purpoſes. Eſtovers commeth of the French word eſtover. And the ſame eſtovers that Tenant for life may have, Tenant for years ſhall have.

Vide Sect. 381.

You have perceived, That our Author divides Tenant for life into two branches, viz. into Tenant for term of his own life, and into Tenant for term of another mans life: to this may be added a third, viz. into an eſtate both for term of his own life, and for the term of another mans life.

Roſſes caſe. lib. 5 fol. 13.

As if a leaſe be made to A. to have to him for term of his own life, and the lives of B. and C. for the leſſee in this caſe hath but one freehold, which hath this limitation. During his own life, and during the lives of two others. And herein is a diverſity to be obſerved between ſeveral eſtates in ſeveral degrees, and one eſtate with ſeveral limitations. For in the firſt, an eſtate for a mans own life is higher than for another mans life, but in the ſecond it is not. As if A. be Tenant for life, the remainder or reverſion to B. for life, A. may ſurrender to B. for

for the Eſtate of B. for terme of his own life is higher than an Eſtate for another mans life: And therefore if Tenant for life infeoffer him in the remainder for life, this is a ſurrender, and no forfeiture. And albeit an Eſtate for terme of a mans own life be but one freehold, yet may ſeveral freeholds in certain caſes be derived out of the ſame, whereof our bookes are very plentiful, and wherewith you may diſport your ſelves for a time. As if Tenant for life maketh a leaſe by Deed, or without Deed, to him in the remainder, or reverſion, in taile or in fee, for the term of the life of him in the remainder or reverſion, and after he in the remainder taketh wife and dieth, his wife ſhall not be endowed, for tenant for life ſhall enjoy the land again, for forfeiture it cannot be, for he in the rem. was party, and ſurrender it cannot be, for that his whole eſtate was not given. 24.E.3.32.& 68.30.aſ.p. 46. 19.E.3.Sur.8. 13.R.2.Dow.95.7.H.6.3 per Cur.18.E.3.48.

The heir maketh a leaſe for life, reſerving a Rent, againſt whom the wife recovereth her Dower and dieth, the Leſſee ſhall have the land again for his life, and the Rent is revived. 7.H.5.4.

So it is, if Tenant for life take husband and by Deed indented they make a Leaſe to him in the Reverſion for the life of the husband, reſerving a Rent, this is neither forfeiture: nor abſolute ſurrender, for the cauſe aforeſaid, and the reſervation is good. 29.Aſſ.p.64.

B. ſeiſed of lands in fee, taketh to wife I. and infeoffes C. in fee, who takes Alice to wife: C. dieth, Alice is endowed; B. dieth, I. recovereth Dower againſt Alice and dieth, Alice ſhall enjoy the land again during her life. 8.E.2.Aſſ.393.45.E.3.13

A. and (a) B. Joyntenants, A. for life, and B. for fee, joyn in a leaſe for life, A. hath a Reverſion, and ſhall joyn in an Action of waſt. (a) 2.H.5.7.13.H.7.15. 18.E.2.Br.835.F.N.B.

Tenant for (b) life, and he in the Reverſion joyn in a leaſe for life, it is ſaid, that they ſhall joyn in an action of waſt, and that the Leſſee for life ſhall recover the place waſted, and he in Reverſion damnages. 59.ſ. (b)27.H.8.12.13.H.7.15 22.H.6.24.17.E.3.9.b.

If a man grant (c) an eſtate to a woman dum ſola fuit, or duraute viduitate, or quam diu ſe bene geſſerit, or to a man and a woman during the coverture, or as long as the Grantee dwell in ſuch a houſe, or ſo long as he pay x. l'. &c. or until the Grantee be promoted to a Benefice, or for any like incertain time, which time, as Bracton ſaith, is tempus indeterminatum: In all theſe caſes, if it be of lands or tenements, the Leſſee hath in Judgment of law an eſtate for life determinable, if livery be made; and if it be of Rents, Advowſons, or any other thing that lie in grant, he hath a like eſtate for life by the delivery of the Deed, and in count or pleading he ſhall alledge the leaſe, and conclude, that by force thereof he was ſeiſed generally for terme of his life. (c)37.H.6.27.26.E.2.69 14.E.2.Grant.92. 3.E.3. 15. 14.H.8.13. Bracton lib.4.fol.207. Fleta lib.3.ca.12.

If a man make a leaſe of a Manor, that at the time of the leaſe made is worth xx.l'. per annum, to another until C. l'. be paid, in this caſe becauſe the annual profits of the Manor are incertain, he hath an eſtate for life, if livery be made determinable upon the levying of the C. l. But if a man grant a Rent of xx. l. per annum until C. l. be paid, there he hath an eſtate for five years, for there it is certain, and depends upon no incertainty. 33.Aſſ.p.2.

And yet in ſome caſes a man ſhall have an incertain intereſt in lands or tenements, and yet neither an eſtate for life, for years, or at will. As if a man by his will in writting, deviſe his lands to his Executors for payment of Debts, and until his Debts be paid; In this caſe the Executors have but a chattel, and an incertain intereſt in the land until his debts be paid; for if they ſhould have it for their lives, then by their death their eſtate ſhould ceaſe, and the debts unpaid, but being a chattel, it ſhall go to the Executors of Executors for the payment of his debts: And ſo note a diverſity between a deviſe and a conveyance at the common law, in his life time. And Tenant by ſtatute Merchant, by ſtatute ſtaple, and by Elegit, have incertain intereſts in lands or tenements, and yet they have but chattels, and no free hold, whoſe eſtates are created by divers Acts of Parliament, whereof more ſhall be ſaid hereafter. And ſo have Gardians in chivalry which hold over for ſingle or double value incertain intereſts, and yet but chattels. Lib.8.f.9. Mannings caſe. 3.H.7.13.27.H.8.5. 14.H.8.13.a1Aſſ.p.8.

If one grant lands or tenements, Reverſions, Remainder, Rents, Advowſons, Commons, or the like, and expreſs or limit no eſtate, the Leſſee or Grantee (due ceremonies requiſite by law being performed) hath an eſtate for life. The ſame law is of a Declaration of a Uſe. A man may have an eſtate for term of life determinable at will; As if the King doth grant an Office to one at will, and grant a Rent to him for the exerciſe of his Office for term of his life, this is determinable upon the determination of the Office. vid.Sect.381.7.Aſſ.Pl.1. 13.El.Dyer 300. 7.E.4.23.

A. Tenant in fee ſimple make a leaſe of lands to B. to have and to hold to B. for term of life, without mentioning for whoſe life it ſhall be, it ſhall be deemed for term of the life of the Leſſee, for it ſhall be taken moſt ſtrongly againſt the Leſſor, and as hath been ſaid, an eſtate for a mans own life is higher then for the life of another. But if Tenant in taile make ſuch a leaſe without expreſſing for whoſe life, this ſhall be taken but for the life of the Leſſor, for two Reaſons. vide Sect.381.

Firſt, when the conſtruction of any act is left to the law, the law which abhorreth injury and wrong will never ſo conſtrue it, as it ſhall work a wrong: And in this caſe, if by conſtruction it ſhould be for the life of the Leſſee, then ſhould the eſtate taile be diſcontinued, and a new Reverſion gained by wrong: But if it be conſtrued for the life of the Tenant in taile, then no wrong is wrought. And it is a general Rule, that whenſoever the words of a Deed, or of the parties without Deed may have a double intendment, and the one ſtandeth with Law and

4.E.2.Wast.11.17.E.3.7. right, and the other is wrongfull and against law, the intendment that standeth with law shall be taken.

Secondly, the law more respecteth a lesser estate by right, than a larger estate by wrong, as if a Tenant for life in remainder disseise tenant for life, now he hath a fee simple, but if Tenant for life die, now is his wrongful estate in fee by Judgment in law changed to a rightful estate for life.

19.H.6.7.H.4.32. 6 E.13.17.7.E.3.66. 18.E.3.60.23.E.3.c.1.&c 11.H.4.44.38.E.3.23.24

If a man retain a servant generally without expressing any time, the law shall construe it to be of one year, for that retainer is according to law. Vide 23. E. 3. cap. 1. &c. To shut up this point it hath been adjudged, that where Tenant in taile made a lease to another for term of life generally, and after released to the lessee and his heirs, albeit between the Tenant in taile, and him a fee simple passed, yet after the death of the lessee, the entry of the issue in taile was lawful; which could not be, if it had been a lease for the life of the lessee, for then by the release it had been a discontinuance executed. But let us now return to Littleton.

Sect. 57.

THis and the rest that follow in this chapter concerning the description of Feoffor and Feoffee, Donor and Donee, and Lessor and Lessee are evident.

¶ *Et est ascavoir que il y ad le Feoffor, & le Feoffee, &c.* Vide Sect. 2. Where a light touch is given who may purchase, now somewhat is to be said, who have ability to enfeoffe, &c. and may be a Feoffor, donor, lessor, &c. Whosoever is disabled by the common law to take, is disabled to infeoffe, &c. But many that have capacity to take, have no ability to infeoffe, &c. As men attainted of Treason, Felony, or of a Præmunire, Aliens born, the Kings Villaines, Traitors, Felons, &c. he that hath offended against the statutes of Præmunire, after the offences committed if Attainders ensue, Ideots, madmen, a man deaf, dumb, and blind from his Nativity, a Feme Covert, an Infant, a man by dures: for the Feoffments, &c. of these may be avoyded. But an Heretick, though he be convicted of Heresie, a leper removed by the Kings writ from the society of men, bastards, a man deaf, dumb, or blind, so that he hath understanding and sound memory, albeit he expresse his Intention by Signs, Villain of a common

Bracton lib.5.fol.415. Britton fol.88.Fleta li.3. ca.3.& lib.6.ca.39.40.

2.H.5.ca.7. which is repealed, Doct. & Stud.lib. 2.cap.29.

ET en ascavoir que il y ad le Feoffor & le Feoffee, Donor & le Donee, & Lessor & le Lessee. Le Feoffor est proprement lou home enfeoffa un auter en aucuns terres ou tenements en fee simple, celuy que fist le feoffment est appel feoffour, & celuy a que le feoffment est fait, est appel feoffee. Et le Donour est proprement lou un home done certaine terres ou tenements a un auter en le taile, celuy que fist le done est appel le Donor, & celuy a que le done est fait, est appel le Donee. Et le Lessor est proprement lou un home lessa a un auter certain terres ou tenements pur terme de vie, ou pur terme des ans, ou a tener a volunt: celuy que fist le leas est appel les-

AND it is to be understood, that there is Feoffor and Feoffee, Donor & donee, Lessor and lessee. Feoffor is properly where a man enfeoffes another in any Lands or Tenements in Fee simple, he which maketh the Feoffment is called the feoffor, and he to whom the feoffment is made, is called the Feoffee. And the Donor is properly where a man giveth certain lands or tenements to another in tail, he which maketh the gift, is called the donor, & he to whom the gift is made, is called the donee. And the lessor is properly where a mã letteth to another lands or tenements for term of life or for term of years, or to hold at will: He which maketh the Lease is called Lessor,

for

for ce celuy a que le leas est fait, est appel Lessee. Et chescun que ad estate en alcun terres ou tenements pur terme de sa vie ou pur terme dauter vie, est appell tenant de franktenement, ce nul auter de meindre estate poit aver franktenement, mes ceux de greinder estate ont franktenement car cestuy en fee simple ad franktenement et celuy en le taile ad franktenement, &c.

and he to whom the lease is made, is called Lessee. And every one which hath an estate in any Land or Tenements for term of his own or another mans life, is called tenant of freehold, and none other of a lesser estate can have a Freehold but they of a greater Estate have a Freehold; For he in Fee simple hath a freehold, and Tenant in taile hath a Freehold, &c.

person before entry, or the like may infeoffe, &c.

(a) All feoffments, gifts, grants, and Leases by Bishops, albeit they be confirmed by the Dean and Chapter, by any of the Colledges or Halls in either of the Universities, or elsewhere, deans and chapters, Master or gardian of any Hospital, parson, Vicar, or any other having Spirituall or Ecclesiacal living, are also to be avoided, (b) and all the said bodies politick or corporate, are by the Statutes of the Realm disabled to make any conveiances to the King, or to any other, as it hath been adjudged: which Statutes have bin made since Littleton wrote.

It is provided (c) by the Statute of Magna Charta, quod nullus liber homo det de cætero amplius alicui de terra sua, quam ut de residuo terræ suæ possit sufficienter fe-

(a) 32.H.8.cap.28.1.El. not printed. 13.El.ca.10. 14.El.ca.11.18.El.ca.29. Ja.ca.

(b) Lib.4.fo.76.120.lib.5 fol.6.14. li.6.fo.37.li.11. fo.67. Magdalen Colledge case. Vide Lest.de W.2. ca.41.

(c) Magna Charta cap.38 Mirror cap.5.Sect.2. Glanvil.lib.7.cap.1. Bract.Lib.1.Brit.88.&c. Fleta lib.3.cap.3.

ri domino feodi servitium ei debitum quod pertinet ad feodum illud. Upon which Act I have heard great question (d) made, whether the feoffment made against that statute were voidable or no, and some have said that the Statute intended not to avoid the feoffment, but implicite to direct the tenure, viz that the tenant should not infeoffe another of parcel to hold of the chief Lord (that is of the next Lord) but to hold of himself, and then the Lord may distrein in every part for his whole service without any prejudice unto him. But this opinion is against (e) the authorities of our books, and against the said statute of Magna Charta. For first it is agreed in 10. H. 7. that as well before the Statutes as after, a tenant which held two Acres might have alienes one of the Acres to hold of him, and notwithstanding the Lord might have distrained in which of the Acres he would for his whole services: and reason teacheth that before that statute a tenant could not have alienes parcel to hold of the chiefe Lord; For the Seigniory of the Lord was entire, for the which the Lord might distrain in the whole or in any part, and which the Tenant by his own Act cannot divide to the prejudice of the Lord to barr him to distrain in any part for his Services, as he should doe, if he should infeoffe another of parcel to hold of the chief Lord. But the Tenant might have made a Feoffment of the whole to hold of the chief lord, for there no prejudice insued to the lord. Others have said, and they said truly, that the intention of the statute was that the Tenant could not alien parcel (which might turn to the prejudice of the lord) without his assent, and this appeareth clearly by the Mirror. And by this Statute the King took benefit to have a fine for his licence, before which Statute no fine for alienation was due to the King. For it is (f) adjudged that for an alienation in the time of Henry the second, no fine was due, and it appeareth in our Books, that if an alienation had been made before 26. H. 3 no fine was due to the King for alienation: yet it is to be observed; that often times for the better understanding of our books, the advised Reader must take light from History and Chronicles especially for distinction of times. And therefore Matthew Paris (who in his Chronicle reciteth Magna Charta) testifieth that King Henry the third by evil counsel (and especially, as the truth was of Hubert de Burgo then chief Justice) sought to avoid the great Charter first granted by his father King John, and afterward granted and confirmed by him. All in the ninth of Henry the third, for that as he said King John did grant it by Duress, and that he himself was within age when he granted and confirmed it. But forasmuch as afterwards the said King Henry the third in the twentieth year of his Raign, at what time he was nine and twenty years old, did grant and confirm the said great Charter, for that cause to put out all scruples is the twentieth year of Henry the third named, albeit in law the Kings Charter granted in the ninth year of Henry third, was of force and validity notwithstanding his nonage, for that, in judgment of law the King, as King, cannot be said to be a Mi-

(d) Vide an excellent declaration hereof inter adjudicat' coram Rege. Trin.E.1.fol.2.in Thes. Nott. & Derb.

(e) Bract. lib.1. 10.H.7.fo.10.b. 33.E.3.avowry 255. Stamf.prer. fol.29. 8.E.4.12.

Mirror cap.5. Sect.2. Fleta lib.3.cap.3.

(f) 26.Ass.p.37.20.Ass. p.17.20.E.3.avowry 126 34. E.3.c.15. Vid. Stamf. 29.39. Matt. Paris. Walsingham 37.39.

Vide 5.H.3. Mordanc. 53. Magna Charta there vouched, which was the Charter of King John, for it was cited before 9.H.3.

nor, for when the Royal Body Politique of the King doth meet with the natural capacity in one person, the whole Body shall have the quality of the Royal Politique, which is the greater and more worthy, and wherein is no minority. For, Omne majus trahit ad se quod est minus. And it is to be observed, that no Record can be found, that either a licence of alienation was sued, or pardon for alienation was obtained for an alienation without licence at any time before the twentieth year of Henry the third, and it is holden in the twentieth of Edward the third, that a licence for alienation grew by this Statute.

20.Ass.Pl.17.by Skipwith.

Now in the case of a common person it was the common opinion, that if the tenant had aliened any parcel contrary to the said act, that he himself was bound by his own act, but that his heir might have avoided it; and in the Kings Case many held the same opinion. For Britton saith, Ne Countes, ne Barons, ne Chivaler, ne Serjeants, que reignont en chiefe de nous ne purr' my dismember nous fees sauns licence: que nous ne puissent per droit engettre les purchasers, &c. And herewith agreeth Fleta, and one Books. But now by the Statute 1.E.3.cap. 12. & 34.E.3. cap. 15. although the Kings tenant in chief or by grand Serjeantie do alien all or any part without licence, yet there is not any forfeiture of the same, but a reasonable fine therefore to be paid. And note, it appeareth by the preamble in 1.E.3. that complaint was made that land holden of the King in Capite, being aliened without licence was seised as forfeited. And in the case of a common person, the Statute of 18. E. 1. De quia emptores terrarum hath made it clear, for this hath in effect as to the common persons taken away the said Statute of Magna Charta cap. 32. for thereby it is provided, Quod liceat uniculque libero homini terras suas seu tenementa sua, seu partem inde ad voluntatem suam vendere, ita quod feoffatus teneat, &c. de Capitali Domino. And herein are divers notable points to be observed. First, that this word liceat proveth that the tenant could not, or at least waits was in danger to alien parcel of his Tenancy, &c. upon the said Act of Magna Charta. Secondly, that upon the feoffment of the whole, the tenant shall hold of the chief Lord. Thirdly, that the tenant might infeoffe one of part to hold pro particula of the chief Lord. But this Act (the King being not named) doth not take away the Kings fine due to him by the Statute of Magna Charta.

Britt.fol.28.88.186.187. 245.247.Prer.Regis ca.7 Fleta lib.6.cap.29.acc. 20.E.3.Ass.122.29.Ass.pl. 19.14.E.3.quare imp.45. 14.H.4.2.3.9.F.3.fo.26. 1.E.3.c.12.34.E.3.ca.15. lib.2.fol.81.82.In Seignior Cromwels case.

Regist.int.les breves de onerand. pro rata portione

¶ *Frank tenement.* Here it appeareth that Tenant in fee, Tenant in taile, and Tenant for life, are said to have a franktenement, a freehold, so called, because it doth distinguish it from terms of years. Chattels upon incertain interests, lands in Villenage or Customary, or Copihold lands. (Liberum autem tenementum dicitur ad differentiam villenagii, & villanorum qui tenent villenagium quia non habent actionem nec assisam, &c. item quod sit suum & non alienum, hoc est si teneat nomine alieno ut firmarius & ad terminum vel sicut creditor ad vadium. And note that tenant by Statute Merchant, Statute Staple, or elegit are said to hold land Ut liberum tenementum until their debt be paid, and yet in troth they (as hath been said) have no freehold, but a chattle, which shall go to the executors, and the executors also if they be ousted shall have an Assise. But (ut) is similitudinary, because they shall by the Statutes have an Assise as tenant of the freehold shall have, and to that respect hath a similitude of a freehold, but Nullum simile est idem.

Bracton lib.4.fo.224. Britton cap.32.& 47. Bracton lib.4.fol.22. Regist.Judic.68.73.

28.Ass.p.7.W.2.cap.18. Stat.de mercatoribus an. 13.E.1.27.E.3.cap.9. 23.H.8.cap.6. F.N.B.178.7.

Chap. 8. Sect. 58.

Tenant for term of years.

¶ *Ou home lessa terres, &c. lessa* and Least is (a) derived of the Saxon word leapum, or leasu, for that the Lessee cometh by lawful means (b) and dimittere is in French layser to depart with or forgo.

(a)Mirror cap.2.Sect.17. Bracton lib.2.cap.26.& lib.4.fol.220.Fleta lib.3. cap.12.& lib.5.cap.34. (b)For the word (dimitte) see Sect.531.

When Littleton wrote, many persons might make Leases for years, or for life, or

¶ Tenant pur time dans ē lou hōe lessa terres ou tenements a un auter pur terme de certaine ans solonque le number des ans que est accord perenter le les-

¶ A Tenant for terme of yeares is, where a man letteth lands or tenements to another for term of certain years after the number of years that is accorded between the

for

ſoꝛ ꝛe leſſee. Et quant le leſſee entrer per force del leas, donque il eſt tenant pur terme des ang. Et ſi le leſſoꝛ en tiel caſe reſerve à luy un annual rent ſur tiel leas il poit eſtier a diſtrainer pur le rent en les tenements leſſes, ou il poit aver un action de debt pur les arrerages enbers le leſſee. Mes en tiel caſe il covient que le leſſour ſoit ſeiſie de meſmes les tenemẽts al temps del leas car il eſt bone plee pur le leſſee adire, que le leſſoꝛ naboit riens en les tenements al tẽps de le leas ſinon que le leas ſoit fait per fait endent, en quel caſe tiel plee donque ne giſt en le bouch le leſſee a pleader.

Leſſor and the Leſſee, and when the Leſſee entreth by force of the Leaſe, then is he tenant for term of years, and if the Leſſor in ſuch caſe reſerve to him a yearly Rent upon ſuch Leaſe, he may chuſe for to diſtrain for the Rent in the tenements letten, or elſe he may have an Action of debt for the arrerages againſt the Leſſee. But in ſuch caſe it behoveth that the Leſſor be ſeiſed in the ſame Tenements at the time of his leaſe for it is a good plea for the Leſſee to ſay, that the leſſor had nothing in the tenemẽts at the time of the leaſe, except the leaſe be made by deed indented, in which caſe ſuch plea lieth not for the Leſſee to plead.

lives at their will and pleaſure, which now cannot make them firm in law. And ſome perſons may now make leaſes for years, or for life or lives (obſerving due incidets) firm and good in Law, who of themſelves could not ſo do when Littleton wrote, and this by force of divers Acts of Parliament (c) as namely 32. H. 8. 1. Eliz. 13. Eliz. 18. Eliz. and 1. Jac. Regis, of which ſtatutes one is enabling, and the reſt are diſabling. When Littleton wrote, Biſhops with the confirmation of the Dean and Chapter, Maſter and Fellows of any Colledg, Deans and Chapters, Maſter or Guardian of any Hoſpital, and his Brethren, Perſon or Vicar, with the conſent of the Patron and Ordinary, Archdeacon, Prebend, or any other body Politick Spiritual and Eccleſiaſtical (Concurrentibus hiis quæ in jure requiruntur) might have made leaſes for lives or years without limitation or ſtint. And to might they have made gifts in taile or eſtates in fee at their will and pleaſure, whereupon not only great decay of Divine ſervice, but Dilapidations and other encombrances enſued, and therefore they were diſabled and reſtrained by the ſaid Acts of 1. Eliz. 13. Eliz. and 3. Jac. Regis to make any ſtate or conveiance to the

(c) 32. H. 8. ca. 28. 1. Eliz. not printed but in the abridgement. 13. Eliz. cap. 10. 18. Eliz. cap. 6. 1. Jac. cap. 3.

Lib. 5. fol. 14. caſe de Eccleſiaſtical perſons. Lib. 11. fol. 66. Magdalen Colledge caſe. Leveſque de Sarums caſe lib. 10. fol. 60. 61.

King at all, or to the ſubject, but there is excepted out of the reſtraint or diſability, leaſes for three lives, or one and twenty years; with ſuch reſervation of Rent, and with ſuch other proviſions and limitation as hereafter ſhall appear. Alſo they may make grants of ancient Office of neceſſity with ancient fees, Concurrentibus hiis quæ in jure requiruntur, for thoſe grants are not within the ſtatute of 32. H. 8. but by conſtruction, they are not reſtrained by the ſtatutes of 1. Eliz. or 13. Eliz. becauſe theſe ancient offices be of neceſſity, and with the ancient fees, and ſo no diminution of revenue.

There be three kinds of perſons that at this day may make leaſes for three lives, &c. in ſuch ſort as hereafter is expreſſed, which could not ſo do when Littleton wrote, viz. Firſt, any perſon ſeiſed of an eſtate taile in his own right. Secondly, any perſon ſeiſed of an eſtate in fee ſimple in the right of his Church. Thirdly, any husband and wife ſeiſed of any eſtate of inheritance in fee ſimple or fee taile in the right of his wife, or jointly with his wife before the coverture or after, viz. the tenant in taile, by Deed to bind his iſſues in taile, but not the reverſion or remainder, the Biſhop, &c. by Deed without the Dean and Chapter to bind his ſucceſſors, the husband and wife by Deed to bind the wife and her and their heirs, and theſe are made good by the ſtatute of 32. H. 8 which inableth them thereunto. But to the making good of ſuch leaſes by the ſaid ſtatute, there are nine things neceſſarily to be obſerved belonging to them all, and ſome other to ſome of them in particular.

Firſt, The Leaſe muſt be made by Deed indented, and not by Deed Poll, or by Parol.

Lib. 5. fol. 6 Sir Z. Mountjoyes caſe.

Secondly, It muſt be made to begin from the day of the making thereof, or from the making hereof.

Thirdly,

Lib. 5. fol. 2 Elmers case.

Thirdly, If there be an old lease in being, it must be surrendred or expired, or ended within a year of the making of the lease, and the surrender must be absolute and not conditional.

Fourthly, There must not be a double Lease in being at one time, as if a lease for years be made according to the statute, he in the reversion cannot expulse the Lessee, and make a lease for life or lives according to the statute, nor è converso, for the words of the Statute be, to make a lease for three lives, or one and twenty years, so as one or the other may be made, and not both.

Fifthly, It must not exceed not three lives, or one and twenty years, from the making of it, but it may be for a lesser term or fewer lives.

(d) Lib. 5. fol. 2. Jewels case. 17. E. 3. 75. 9. Ass. 24. 12. E. 3. Scire facias 22. 10. H. 6. 2. 3. H. 6. 21.

Sixthly, It must be of Lands, Tenements and Hereditaments, Manurable or Corporeal, which are necessary to be letten, and whereout a rent by law may be reserved, and not (d) of things that lies in grant, as Advowsons, Fairs, Markets, Franchises, and the like whereout a rent cannot be reserved.

(e) Lib. 6. fol. 37. Dean and Chapter of Worcesters case.

Seventhly, It must be of lands or tenements which have most commonly been letten to farm or occupied by the farmers thereof by the space of 20 years next before the lease made, so as if it be letten for 11. years, at one or several times within those 20. years it is sufficient. A grant (e) by copy of Court roll in fee for life or years is a sufficient letting to farm within this statute, for he is but tenant at will according to the custom, and so it is of a lease at will by the Common law, but those lettings to farm must be made by some seised of an estate of Inheritance, and not by a Gardian in chivalrie, tenant by the curtesie, tenant in dower, or the like.

Lib. 5. fol. 6 Seignior Mountjoyes case.

Eightly, that upon every such lease there be reserved yearly during the same lease due and payable to the lessors their heirs and successors, &c. so much yearly farm or rent, or more as hath been most accustomably yelded or paid for the lands, &c. within twenty years next before such lease made Hereby first it appeareth (as hath been said) that nothing can be demised by Authority of this act, but that whereout a rent may be lawfully reserved. Secondly, That where not only a yearly rent was formerly reserved, but things not annual, as heriots, or any fine or other profit at or upon the death of the farmor yet if the yearly rent be reserved upon a lease made by the force of this statute, it sufficeth by the express word of the act. Thirdly, If he reserve more than the accustomable rent it is good also by the express letter of the act; but if twenty acres of land have been accustomably letten, and a lease is made of those twenty, and of one acre which was not accustomably letten; reserving the accustomable yearly rent, and so much more as exceeds the value of the other acre, this lease is not warranted by the act, for that the accustomable rent is not reserved, seeing part was not accustomably letten, and the rent issueth out of the whole. Fourthly, if tenant in taile let part of the land accustomably letten, and reserve a rent pro rata, or more, this is good, for that is in substance the accustomable rent. Fifthly, If two Coparceners be tenants in taile of twenty acres every one of equal value, and accustomably letten, and they make partition, so as each have ten acres, they may make leases of their several parts each of them, reserving the half of the accustomable rent. Sixthly, if the accustomable rent had been payable at four dates or Feasts of the year, yet if it be reserved yearly payable at one Feast, it is sufficient, for the words of the statute be, reserved yearly.

Lib. 6. fol. 37. 38. Dean and Chapter of Worcesters case.

Lib. 5. fol. 5. Seignior Mountjoyes case, lib. 6. fol. 37.

Lord Mounjoyes case ubi supra.

Ninthly, not to any leases to be made without impeachment of wast, therefore if a lease be made for life, the remainder for life, &c. this is not warranted by the statute, because it is disputable of waste. But if a lease be made to one during three lives, this is good, for the occupant if any happen; shall be punished for waste. The words of the statute be (seised in the right of the Church) yet a Bishop that is seised jure Episcopatus, a Dean of his sole possessions in jure Decanatus, an Archdeacon in jure Archidiaconatus, a Prebendarie and the like are within the statute, for every one of them generally is seised in jure Ecclesiæ.

Dean and Chapter of of Worc. case ubi supra.

Dean and Chapter of Worc. case ubi supra.

But a Parson or Vicar are excepted out of the statute of 32. H. 8. and therefore if either of them make a lease for three lives, &c. of lands accustomably letten reserving the accustomed Rent, it must be also confirmed by the Patron and Ordinary, because it is excepted out of 32. H. 8. and not restrained by the statute of primo, or 13. Eliz. And what hath been said concerning a lease for three lives, doth hold for a lease for one and twenty years.

3. E. 6. 1. Mar. tit. leases. Bre. 62.

Thus much shall suffice to have spoken of the inabling statute of 32. H. 8. the better to inable the Reader to understand both this and that which follows. Now to speak somewhat of the disabling statutes of 1. Eliz. and 13. Eliz. the words of the exception out of the restraint and disabitly of 1. Eliz. are, Other than for the term of twenty one years, or three lives, from such time as any such grant or assurance shall be given, whereupon the old and accustomed yearly rent, or more, shall be reserved: And to that effect is the exception in the statute of 13. Eliz. First, it is to be understood, that neither of these disabling Acts, nor any other, do in any sort alter or change the inabling statute of 32. H. 8. but leaveth it for a pattern in many things for leases to be made by others Secondly, It is to be known, that no lease made according to the exception of 1. Eliz. or 13. Eliz. and not warranted by the statute of 32. H. 8. if it be made by

by a Bishop, or any sole Corporation, but it must be confirmed by the Deans and Chapters, or others that have interest, as hath been said in the case of the Parson and Vicar, but examples do illustrate. If a Bishop make a lease for 21. years, and all those years being spent, saving three or more; yet may the Bishop make a new lease to another for twenty one years, to begin from the making, according to the exception of the statute, but not a lease for life or lives, as hath been said, and this concurrent lease hath been resolved to be good, as well upon the exception of 1. Eliz. in the case of Bishops, as upon 13. Eliz. which extend to spiritual and ecclesiastical Corporations, aggregate of many, as Deans and Chapters, &c. which 32. H. 8. did not: but in the case of the concurrent lease, in the case of the Bishop it must be confirmed. Also the exception of 1. Eliz. and 13. Eliz. doth differ from the statute of 32. H. 8. for the leases for years to be made according to the exceptions of the statutes of 1. and 13. Eliz. must begin from the making, and not from the day of the making, but by force of 32. H. 8. from the day of the making. And although the statutes of the first or thirteenth of Eliz. do not appoint the lease to be made by writing, yet must it therein and in the other eight properties or qualities before mentioned and required by 32. H. 8. follow the pattern thereof (the concurrent lease only except.) Although the exception in 1. and 13. Eliz. concerning the accustomed rent is more general than that of 32. H. 8. and there is not any provision for leases made dispunishable of waste, &c. yet must the pattern of 32. H. 8. be followed: for leases without impeachment of waste made by such Spiritual and Ecclesiastical persons are unreasonable & causes of dilapidations. Thus much have I thought good to lead the studious Reader by the hand, and to conduct him in the right way, And to put all these things together upon consideration had of all the statutes, which otherwise might have prima facie seemed to him a diffuse and dark labyrinth. And albeit it be provided by the said Acts of 1 and 13. Eliz. that all grants, &c. leases, &c. made, &c. (other than leases for three lives or one & twenty years according to those Acts) should be utterly void and of none effect, to all intents, constructions, and purposes, yet grants, or leases, &c. not warranted by those acts are not void, but good against the lessor, if it be a sole Corporation: or so long as the Dean or other head of the Corporation remain, if it be a Corporation aggregate of many: for the statute was made in benefit of the successor. But let us now return to our Author.

Lib. 3. fo. 59. 60. Lincoln Colledge case. P. 29. Eliz. Int. Hunt & Singleton ibidem.

¶ *Home lessa.* Here Littleton putteth this case where one letteth &c. It is therefore necessary to be seen what the Law is where divers joyn in a lease. If the Tenant of the land, and a stranger which hath nothing in the land joyn in a lease for years by Deed indented of one and the self-same land, this is the lease of the tenant only, and the confirmation of the stranger, and yet the lease as to the stranger works by conclusion.

Vide Sect. 346. 11. H. 4. 1. 5. E. 4. 4. 2. 27. H. 8. 16.

If two several Tenants of several lands, joyn in a lease for years by Deed indented, these be several leases and several confirmations of each of them, from whom no interest passeth, and work not by way of conclusion in any sort, because several interests pass from them. B. tenant for life of C. and he in the remainder or reversion in fee, having several estates in the one and the same land, joyn in a lease for years by Deed indented, this demise shall work in this sort, during the life of C. it is the lease of B. and confirmation of him in the reversion or remainder, and after the decease of C. it is the lease of him in the reversion or remainder, and the confirmation of B. for seeing the lessors have several estates, the law shall construe the lease to move out of both their estates respectively, and every one to let that which he lawfully may let, and not to be the lease only of tenant for life, and the confirmation of him in the remainder or reversion, neither is there any conclusion in this case, as shall be said hereafter. Tenant for life and he in the remainder in fee, made a lease for years by Deed indented, the lessee was ejected, and brought an Ejectione firmæ, and declared upon a demise made by tenant for life and him in remainder, and upon not guilty pleaded, this special matter was found, and that tenant for life was living, and it was adjudged (a) against the plaintiff, for during the life of the tenant (as hath been said) it is the lease of tenant for life, and therefore during his life he ought to have declared of a lease made by him, and after his decease he ought to declare of a lease made to him in remainder. (b) and the Deed indented could be no Estoppel in this case, because there passed an interest from them both. And whensoever any interest passeth from the party, there can be no Estoppel against him, and (c) so it was adjudged. Hereby you shall understand your books the better which treat of those matters, and accordingly it was adjudged that where tenant in taile and he in the remainder in fee joyned in a grant of a rent charge by Deed in fee, and after tenant in taile died without issue, the grantee distrained and avowed by force of a grant from him in the remainder, and upon non concessit, the Jury found the special matter, and it was adjudged for the avowant; for every one granted according to his estate and interest.

(a) 27. H. 8. f. 13. 2. 13. H. 7 14. 2. H. 5. 7. Lib. 1. fol. 76. Bredons case.
(b) Mich. 36. & 37. Eliz. in the Kings Bench. Vide Mich. 6. & 7. Eliz. Dier 234. 235.
(c) Hill. 44. El. Rot. 1459. in Communi Banco int. Ellice & Cowne.

Leases for lives or years are of three natures, some be good in Law; some be voidable by

entry, and some void without entry. Of such as be good in Law, some be good at the Common Law as made by tenant in fee, whereof Littleton here putteth his case, some by act of Parliament, as tenant in taile, a Bishop seised in fee in the right of his Church alone without his Chapter, a man seised in fee simple or fee taile in the right of his wife together with his wife (as hath been said) may by deed indented make Leases for 21. years or three lives in such manner and form as hath been said, and by the Statute (d) is limited; all which were voidable by the common Law when Littleton wrote, and now are made good by Parliament.

(d) 32. H. 8. cap. 28.

An infant seised of land holden in Socage, may by custom make a lease at the age of 15. years, and shall bind him, which lease was voidable by the common Law; Voidable, some by the common Law, after the death of the lessor as of tenant in taile a Bishop, &c. Or after the death of the husband (intended of leases not warranted by the Statute of 32. H. 8.) Some voidable by act of Parliament, as by a Bishop though it be confirmed by Dean and Chapter, if it be not warranted by the Statute of 32. H. 8. and so of a Dean and Chapter after the death of the Dean; Some voidable at times by the lessor himself or his heirs, as by an infant and the like. Some void in futuro, and some void in præsenti. In futuro, as if a tenant in taile make a lease for years and die without issue, it is void, as to them in reversion or remainder, though it be made (e) according to the said Statute. If a Prebend, Parson or Vicar make a lease for years, it is void by death; if it be not according to the Statutes. Otherwise it is of a lease for life, for that is voidable, & sic de similibus.

(e) 33. H. 8. Dier lib. 3. fol. 59. 60. in Lincoln Colledge case. Hunts case vouched.

Some void in præsenti, as if one make a lease for so many years as he shall live, this is void in præsenti for the uncertainty. Et sic in similibus, where of Littleton himself will teach you next and immediately, and I know you would now gladly hear him.

¶ *Pur terme.* Pro termino, Terminus in the understanding of the Law doth not only signifie the limits and limitation of time, but also the estate and interest that passeth for that time. As if a man make a lease for 21. years, and after make a lease to begin A fine & expiratione prædicti termini 21 annorum dimiss. and after the first lease is surrendred, yet the second lease shall begin presently, but if it had been to begin Post finem & expirationem prædict' 21. annorum, in that case although the first term had been surrendred, yet the second Lease should not begin, till after the 21. years be ended by effluxion of time, and so note the diversitie between the term for 21. years, and 21. years; and (f) herewith agreeth the Lord Pagets case.

Pl. com Wroteſl. 198. 35. H. 8. tit. exposition des parols 44. lib. 1. fo. 105. in Davenports case.

(f) Lib. 1. fol. 154. in the Rector of Chedingtons case.

(g) Words to make a lease be, demise, grant, to farm let, betake, and whatsoever word amounteth to a grant may serve to make a lease. In the Kings case (h) this word Committo doth amount sometime to a grant, as when he saith Commissimus W. de B. officium seneschalciæ, &c. quamdiu nobis placuerit, and by that word also he may make a lease: and (i) therefore à fortiori a common person by that word may do the same.

(g) Vide Sect. 531.
(h) Register F. N. B. 170. e
(i) 8. H. 6. 34.

¶ *De certaine ans.* For regularly in every lease for years the term must have a certain beginning, and a certain end, and herewith (k) agreeth Bracton, terminus annorum certus debet esse & determinatus. And Littleton is here to be understood, first, that the years must be certain when the lease is to take effect in interest or possession. For before it take effect in possession or interest, it may depend upon an incertainty, viz. upon a possible contingent before it begin in possession or interest, or upon a limitation or condition subsequent. Secondly, albeit there appear no certainty of years in the lease, yet if by reference to a certainty it may be made certain it sufficeth. Quia id certum est quod certum reddi potest. For example of the first. If A. seised of lands in fee grant to B. that when B. payes to A. 5s. shillings, that from thence forth he shall have and occupy the land for 21. years, and after B. payes the 5s. shillings. this is a good lease for 21. years from thenceforth. For the second, if A. leaseth his land to B. for so many years as B. hath in the Mannor of Dale, and B. hath then a term in the Mannor of Dale for 10. years, this is a good lease by A. to B. of the land of A. for 10. years. If the Parson of D. make a lease of his gleabe for so many years as he shall be Parson there, this cannot be made certain by any means, for nothing is more uncertain than the time of death, Terminus vitæ est incertus, & licet nihil certius sit morte, nihil tamen incertius est hora mortis. But if he make a lease for three years, & so from three years to three years, so long as he shall be Parson, this is a good lease for 6. years, if he continue Parson so long, first for three years, and after that for three years; and for the residue uncertain.

(k) 14. H. 8. 14. 3. Mar. Ieases Br. 67. 2. Mar. ibid. 67. Say & Fullers case pl. com. 273. & Weldens case ibid. 4. H. 6. 12. 21. H. 7. 38. Vid. le case del eveſque de Bathe. lib. 6. fol. 34. 35. Bract. lib. 2. cap 9. Vid. lib. 1. fo. 155. 156. Rector de Chedingtons case.

Bract. lib. 2. cap. 9. So resolved Hill. 26. Eliz. rot. 935. in com. banco.

If a man maketh a lease to I. S. for so many years as I. N. shall name, this at the beginning is incertain, but when I. N. hath named the years, then it is a good lease for so many years.

Pl. Com. Say & Fullers case. Mirror ca. 2. sect. 17. & cap. 5. sect. 1.

A man maketh a lease for 21. years if I. S. live so long, this is a good lease for years, and yet is certain in incertainty, for the life of I. S. is certain. See many excellent cases concerning this matter put in the said case of the Bishop of Bath and Wells. By the ancient law of England for many respects a man could not have made a lease above 40. years at the most, in

then

then was it ſaid that by long leaſes many were prejudiced, and many times men diſherited, but that ancient Law is antiquated.

In the eye of the Law any eſtate for life being as Littleton hath ſaid, an eſtate of freehold, againſt whom a præcipe quod reddat doth lie, is an higher and greater eſtate than a leaſe for years, though it be for a thouſand or more, which never are without ſuſpicion of fraud, and they were the leſs valuable, for that at the common Law they were ſubject unto, and under the power of the tenant of the freehold, the learning whereof ſtandeth thus, and is worthy to be known. When Littleton wrote, if a man had made a leaſe for years by writing, and he that had the freehold had ſuffered himſelf to be impleaded in a real action by collution to barr the Leſſee of his term, and made default, &c. The ſtatute of Glouc' gave the leſſee for years ſome remedy by way of receipt, and a tryal whether the demandant did move the plea by good right or collution, and if it were found by collution, then the termor ſhould enjoy his term, and the execution of the judgment ſhould ſtay until after the term ended. But this ſtatute extended not to 5. Caſes. Firſt, if the leaſe were without writing, for the words of this act are, (ſo that the termor may have recovery by writ of Covenant.) 2. It extendeth not but to a recovery by default. 3. The termor could not be relieved by this ſtatute, unleſs he knew of the recovery and were received, &c. 4. By the better opinion of books, it extendeth not to tenants by ſtatute Merchant, Statute ſtaple, or elegit. 5. Not to gardian. (l) But now the ſtatute of 21. H. 8. doth give remedy in all the ſaid caſes, ſaving the caſe of the gardian, and giveth them power to falſifie all manner of recoveries, had againſt the tenants of the freehold upon feigned and untrue titles, &c Now the (m) ſtatute ſaith, that it was a doubt before that ſtatute whether a Termor for years might falſifie or no: but yet it ſeemeth by the better opinion of books in ſo great variety, that he having but a chattel, was not able by the common Law to falſifie a covenous recovery of the freehold, becauſe he could not have the thing that was recovered. (a) And Thirning and Hankford do hold that a gardian is not within the ſtatute of Glouc'.

Lib.11.fo.33.

(l)21.H.8.ca.15.

(m)That a termor might falſifie at the Common Law. Vid.19.E.3.Aſſ.82. 21.E.3.1.7.H.7.11.b. 1.H.7.9.b.Pl.Com.83. 10.E.3 46.19.E.3.reſcoit 112.

If two Coparceners be, and one of them let her part to another for years, and after upon a writ of partition brought againſt the Leſſor too little is allotted to the Leſſor, it is holden by ſome that the Leſſee cannot avoid it, for that it is made by the oath of men, and judgment is therepon given that the partition ſhall remain firm and ſtable. But if there be two Coparceners of three acres of land, every one of equal value, and the one coparcener letteth her part, and after make partition, and one acre is allotted only to the leſſor, the leſſee is not bound hereby, but he may enter and take the profits of another half acre, for that of right belong unto him. Thus much have I thought good to ſet down, for it ſufficeth not to know what the Law is in theſe caſes, unleſs he underſtand the reaſon and cauſe thereof.

That he could not. 30.H.6. Fauxer recovery 9. 43.Aſſ.41.26.H.8.2. 9 E.4.38.F.N.B.198.E. 14.H.8.4.lib.9.fo.135. Aſcoughes caſe. (a) 7.H.4.12. 33.H.8.Dier 52.

And albeit (as hath been ſaid) a leaſe for years muſt have a certain beginning, and a certain end, yet the continuance thereof may be incertain, for the ſame may ceaſe and revive again in divers caſes. As if a tenant in taile make a leaſe for years reſerving xx. ſhillings, and after take a wife and die without iſſue, now as to him in the reverſion the leaſe is meerly void, but if he indow the wife of the tenant in tails of the land, (as ſhe may be though the eſtate taile be determined) now is the leaſe as to the tenant in dower (who is in of the eſtate of her husband) revived again as againſt her, for as to her the eſtate taile continueth, for ſhe ſhall be attendant for the third part of the rent ſervices, and yet they were extinct by act in Law. So it is if tenant in tail make a leaſe for years ut ſupra, and dieth without iſſue, his wife enſeint with a ſon, he in the reverſion enter, againſt him the leaſe is void, but after the ſon be born the leaſe is good, if it be made according to the (b) ſtatute, and otherwiſe is voidable.

(a)revived 10.E.3.26.34.Aſſ.15. 23.E.3.Dower 130.

The King made a gift in taile of the Manor of Eaſtfarleigh in Kent, to W. to hold by Knights ſervice; W. made a leaſe to A. for thirty ſix years, reſerving thirteen pound rent; W. died, his ſon and heir of full age, all this was found by office: as to the King this leaſe is not of force, for he ſhall have his primer ſeiſin, as of lands in poſſeſſion, but after livery, the leſſee may enter; and if the iſſue in taile accept the rent, the leaſe ſhall bind him, for the Kings primer ſeiſin ſhall not take away the election of the iſſue in taile, for it may be that the rent was better than the land: (c) and ſo it was adjudged in Auſtens caſe, as I had it of the report of Maſter Edmond Plowden, a grave and learned Appren tice of law.

(b)32.H.8.ca.28.

(c)Paſch.2.& 3.Ph. & Mar. in an information of intruſion in the Exchequer againſt Auſten. Vid.Dier paſch.2.& 3. Ph.& Mar.115. 13. Eliz.ca.10.

If tenant in fee take wife, and make a leaſe for years, and dieth, the wife is endowed, ſhe ſhall avoid the leaſe, but after her deceaſe the leaſe ſhall be in force again. But if the Patron grant the next avoidance, and after Parſon, Patron, and Ordinary, before the ſtatute, (d) had made a leaſe of the glebe for years, and after the Parſon dieth, and the grantee of the next avoidance had preſented a Clerk to the Church, who is admitted, inſtituted, and inducted, and dieth within the term, the Patron preſents a new Clerk, and he is admitted, inſtituted, and inducted, albeit he cometh in under the Patron that was party to the leaſe, yet becauſe the laſt incumbent, who had the whole ſtate in him, avoided the leaſe, it ſhall not revive again, no more than if a feme covert levy a fine alone, if the husband enter and avoid the fine, and die, the whole eſtate is ſo avoided as it ſhall not bind the wife after his death.

(d)6.E.6.Dier 72. 17.E.3.52.17.Aſſ.p.17. 2.R.3.20.9.H.6.33.

If a woman be endowed of an advowson which is appropriated, and the present, and her incumbent is admitted, instituted, and inducted, albeit the Incumbent die, yet is the appropriation wholly dissolved, because the incumbent which came in by presentation, had the whole state in him, and so was it adjudged, as the case is to be intended.

e.E.3.8.per Scroope.

Tenant in taile make a lease for forty years, reserving a rent, to commence ten years after; tenant in taile die, the issue enter and infeoffe A. ten years expire, the lessee enter, if A. accept the rent the lease is good, for he shall have the same election that issue in taile had, either to make it good, or to avoid it, so as it could not be precisely affirmed, whether by the entry of the issue this executory lease was avoided, but it depended incertainly upon the will of the feoffee. But now I know you are desirous to hear Littleton, who is speaking to you.

Pl.Com.437.a.

¶ *Et quant le lessee enter per force del lease: donques il est tenant pur terme des ans.* And true it is, that to many purposes he is not Tenant for years until he enter: as a release made to him is not good to him to increase his estate, before entry; but he may release the rent reserved before entry, in respect of the privity. Neither can the Lessor grant away the reversion by the name of the reversion, before entry, vide Sect. 567. But the lessee before entry hath an interest, interesse termini grantable to another, vide Sect. 319. And albeit the lessor die before the lessee enters, yet the lessee may enter into the lands, as our Author himself holdeth in this Chapter. And so if the lessee dieth before he entred, yet his executors or administrators may enter, because he presently by the lease hath an interest in him: And if it be made to two, and one die before entry, his interest shall survive. Vide Sect. 281.

V.Sect.454.455.

He that hath a lease for years, hath it either in his own right, wherof Littleton hath here spoken, or in anothers right, and that in divers manners, as a man may have a term for years in the right of his wife, wherof the husband hath power to dispose at any time during his life, and if he survive his wife, the Law doth give the lease to him. But if he make no disposition therof, and his wife survive him, it remaineth with the wife: but of this in another place more fully.

V.Sect.665.more fully of this matter.

If a man be possessed of a term of forty years in the right of his wife, and maketh a lease for twenty years, reserving a rent, and die, the wife shall have the reversion of the term, but the executors of the husband shall have the rent, for it was not incident to the reversion; for that the wife was not party to the lease. So note, a disposition of part of the term is no disposition of the whole. But if the husband grant the whole term, upon condition that the grantee shall pay a sum of money to his executors, &c. the husband die, the condition is broken, the Executors enter, this is a disposition of the term, and the wife is barred therof, for the whole interest was passed away.

Mich.17.El.in the Kings Bench.

If a lease be made to a baron and feme for term of their lives, the remainder to the executors of the survivour of them, the husband grant away this term and dieth, this shall not barr the wife, for that the wife had but a possibility, and no interest.

If the husband & wife be ejected of a term in the right of his wife, & the husband dying an ejectione firmæ in his own name, and have judgment to recover, this is an alteration of the term, and vesteth it in the husband.

37.Ass.p.11.Pl. Com.418.b.

If a lease for years be made to a Bishop and his successors, yet his executors or administrators shall have it in auter droit, for regularly no Chattel can go in succession in a case of a sole Corporation, no more than if a lease be made to a man and his heirs, it can go to his heirs. But let us return to Littleton.

Touching the time of the beginning of a lease for years, it is to be observed, that if a lease be made by Indenture, bearing date 26. Maii, &c. to have and to hold for twenty one years, from the date, or from the day of the date, it shall begin on the twenty seventh day of May. If the lease bear date the twenty sixth day of May, &c. to have and to hold from the making hereof or from henceforth, it shall begin on the day in which it is delivered, for the words of the Indenture are not of any effect till the delivery, and thereby from the making, or from henceforth take their first effect. But if it be a die confectionis, then it shall begin on the next day after the deliverie. If the habendum be for the term of twenty one years, without mentioning when it shall begin, it shall begin from the delivery, for there the words take effect, as is aforesaid. If an Indenture of lease bear date, which is void or impossible, as the thirtieth day of February, or the fortieth of March, if in this case the term be limited to begin from the date, it shall begin from the delivery, as if there had been no date at all. (a) And so it is, if a man by his Indenture of lease, either recite a lease which is not, or is void, or misrecite a lease in point material which is in esse. To have and to hold from the ending of the former lease, this lease shall begin in course of time from the delivery therof.

Li.5.fo.1.Claytons case 12.Eliz.Dyer 286.

14.El.Dy.307.5. El.Dy.218.

Li.2.fo.5.Goddards case.

(a) Pl.Com.148.3.E.6. tit.LeasesBr.62.3.El.Dy. 295. 1.Mar.Dyer 116.

¶ *Et si le lessor en tiel case reserve a luy un annual rent sur tiel lease, il poet estier a distreyner pur le rent, ou il poet aver action de debt pur les arrerages,*

¶ *Reserv*

¶ *Reserve a laynn annual rent, &c.* First it appeareth (b) hereby Littleton that a Rent must be reserved out of the lands or Tenements, wherevnto the lessor may have resort or recourse to distrein, as Littleton here also saith, and therefore a Rent cannot be reserved by a common person out of any incorporeal Inheritance, as Advowsons, Commons, Offices, condie, mulcture of a Mill, Tythes, Fayres, Markets, Liberties, Priviledges, Franchises, and the like. (c) But if the lease be made of them by Deed for years, it may be good by way of contract to have an Action of Debt, but distrein the lessor cannot. Neither shall it pass with the Grant of the Reversion for that it is no Rent incident to the Reversion. But if any Rent be reserved in such case upon a lease for life, it is vterly void, for that in that case no Action of Debt nor lie. But if a man demiseth the pesture or herbage of his land, he may reserve a Rent, for that the thing is mayntayned, and the lessor may distrein the cattel upon the land: And so a reversion, or a remainder of lands or tenements may be granted reserving a Rent, for the apparent possibility that it may come in possession, and they are tenements within the words of Littleton.

(b) Li.7.fo.23.Buts case. Li.10.fo.59.60.
(c) 30.Ass.p.5.12.Ass.29. 20.E.4.10. 1.H.4.1.2.3.11.H.4.82. 19.E.2.Fines 136.44.E.3 45.9.ass.pl.4.35.ass.60.14. E.3.Scir.fac.122.5.E.3. 68.17.E.3.75.11.H.4.49. 3.H.6.21.45.10.H.6.11. 21.H.6.11.5.H.7.39. 21.H.7.19.17.E.4.Ex.112 23.El.Dyer 377.

(a) It appeareth by Littleton, that reservando is an apt word of reserving a Rent, and so is reddendo, solvendo, faciendo, inveniendo, dummodo, and the like.

(a) 40.E.3.49.8.E.3.67. 21.E.4.62.3.H.6.45. 31.ass.p.30.3.ass.9.26.ass. 66.32.E.3.Br.291.8.E.4. 8.10.El.Dy.276.Pl.com. en Browning & Beestones case fo.131.132. &c.

(b) And note a diversity between an exception (which is ever of part of the thing granted and of a thing in esse) for which, excepting, salvo, præter, and the like be apt words; and a reservation which is always of a thing not in esse, but newly created or reserved out of the land or tenement demised. (c) Poterit enim quis rem dare & partem rei retinere, vel partem de pertinentiis, & illa pars quam retinet semper cum eo est & semper fuit. (d) But out of a general a part may be reserved, as out of a Mannor, an Acre, Ex verbo generali aliquid excipitur, and not a part of a certainty, as out of twenty Acres, one.

(b) 50.E.3.12.13.Ass.9. 38.E.3.10.21.E.3.4.34. ass.11. 29.E.3.14.3.H.6. 45.10.H.6.8.41.33.H.6.1 35.H.6.34.17.ass.14.H.8. 1.44.E.3.42.Pl.com.361
(c) Bract.li.2.f.32.b.&f. 249.
(d) 9.El.Dy.264.38.H.6. 38.14.H.8.1.22.E.3.8. 2.E 3.56.5.E.3.66. 34.Ass.11.

It is further to be observed that the lessor cannot reserve to any other but to himself, for Littleton saith, reserve a luy, reserve to himself. (e) If two Joyntenants be, and they make a lease for years by parol, or deed poll reserving a Rent to one of them, this shall enure to them both, but if it be so reserved by deed indented, it shall enure to him alone by way of conclusion.

(e) 5.E.4.4.14.E.3. bre.282.lib.8.fo.70.71.

(f) Littleton here is putting of a case, and not making a lease, for then he would not reserve the Rent to him, but to him and his heirs, for otherwise the Rent shall determine by his death, if he die within the term. (g) But if he reserve a Rent generally without shewing to whom it shall go, it shall go to his heirs. If he reserve a Rent to him and his Assignes, yet the Rent shall determine by his death, becaule the reservation is good but during his life. So it is if he reserve a Rent to him and his Executors it shall end by his death, because the heir hath the reversion, and the Rent was incident to the reversion. So if a man warrant land to B. and his Assignes, the Assignee must vouch during the life of B. for the warranty continue but only during the life of B. for the warranty is but for life, for want of words of Inheritance. But if the warranty be to B. his heirs and Assignes, so as he hath an Inheritance therein, then his Assignee shall vouch after his decease. So if the Rent be reserved to the lessor his heirs and Assignes, so as it be incident to the Inheritance, then shall all the Assignees of the reversion enjoy the same.

(f) Vid.sect.214.215.216 &c.10.E.4.18.11.E.3. Ass.86.27.H.8.19. 21.H.7.25.30.H.8.Dy.45
(g) Mich.5.Ja.in repl. inter Wooton & Edwin bank le roy.Hil.33.El. Rot.1431.in Bank le roy enter Richmond & Butcher.

¶ *Annual rent.* So it is if the Rent be reserved every two or three or more years. Of Rents Littleton doth excellently treat hereafter in his chapter of Rents, and therefore in this place thus much shall suffice.

¶ *A distreyner pur le rent.* Here it is necessary to be seen of what things a distress may be taken for a Rent, and how the distress ought to be demanded. (h) First, it must be of a thing, where of a valuable property is in some body, and therefore Dogs, Bucks, Does, Conies, and the like that are feræ naturæ cannot be distreyned. Secondly, although it be of valuable property as a horse, &c. yet when a man or woman is riding on him, or an axe in a mans hand cutting of wood and the like, they are for that time priviledged and cannot be distreyned. (i) 3. Valuable things shall not be distreyned for Rent for benefit and maintenance of Trades, which by consequent are for the Common-wealth, and are there by Authority of law, as a horse in a Smiths shop shall not be distreyned for the Rent issuing out of the shop, nor the horse, &c. in the Hostry, nor the materials in the weavers shop for making of cloth, nor cloth or garments in a Taylors shop, nor sacks of corn or meale in a Mill, nor in a Market. nor any thing distreyned for dammage feasant, for, it is in Custody of Law, and the like.

Vi.for this word distreia Sect. 136.
(h) 14.H.8.25.2.E.2.tit. Distress.6. R.2.Rescous 11.7.E.3.Avowr.199.15. R. 2.Avowr.2.
(i) 22.E.4.49.b.7.H.7.1.b 22.E.4.36.4.E.6.tit.Dist. Br.74.

(k) 4. Nothing shall be distreyned for Rent, that cannot be rendred again in as good plight as it was at the time of the distress taken, as sheaves or shocks of corn or the like cannot be distreyned for Rent, but for dammage feasant they may be distreyned. But chariots or carts with corn may be distreyned for Rent, for they may be safely restored.

(k) 18.E.3.4.2.11.H.7. 14.2.21.H.7.39.b.21.E.4 50.b.2.H.4.15.

(l) 5. Beasts belonging to the Plow, averia carucæ shall not be distreyned (which is the Antient common law of England, for no man shall be distreyned by the Utensils or Instruments of his Trade or Profession, as the Axe of the carpenter, or the books of a scholar) while goods

(l) Okeham 38.39. Bra.li.4.f.217.F.N.B.90. à Reg.97.Flet.li.2.ca.41. Mirr.cap.2.Sect.15.16. 4.E.3.11.29.E.3.17.

or other beasts, which Bracton calls animalia (or catalla) otiosa, may be distreyned. (m) 6. Furnaces, cauldrons or the like fixed to the freehold, or the doors or windows of a house, or the like cannot be distreyned. (n) Lastly, beasts that escape may be distreyned for Rent, though they have not been levant and couchant. (o) Note that he that distreyns any thing that hath life, must impound them in a lawful Pound within three miles in the same County, and that is either Overt or Open, in a Pinfold made for such purposes, or in his own close, or in the close of another by his consent. And it is therefore called Open, because the owner may give his cattle meat and drink without trespas to any other, and then the cattle must be sustained at the peril of the owner, (p) Or it is a Pound covert or close, as to impound the cattle in some part of his house, and then the cattle are to be sustained with meat and drink at the peril of him that distreyneth, and he shall not have any satisfaction therefore. But if the distress be of Utensils of houshold, or such like dead goods which may take harm by wet or weather, or be stoln away there he must impound them in a house or other Pound covert within three miles within the same County, for if he impound them in a Pound overt he must answer for them.

(m) 21.H.7.26. 3.E.3.Ass.46.9. (n) 7.H.7.1.b.10.H.7.21. 11.H.7.4.2.15.H.7.17. 18.E.2.avowry.219.6.E. 4.22.E.4.49. 4.E.3.distress.18.27.E.3. 20.2.H.4.16. (o) Marlebr.cap.4. W.1.cap.16. 2.& 3.Ph.& Mar.cap.13. Fleta lib.2.cap.20. 6.H.3.avowrie 242. 30.Ass.38.1.H.6.9. 22.E.4.11.F.N.B.89. Doctor & Student.lib.2. cap.27. 5.H.7.fol 9. (p) 33.H.8.tit.distres. Br.65.

(q) If the distress be taken of goods without cause, the owner may make Rescous, but if they be distreyned without cause, and impounded, the owner cannot break the Pound and take them out, because they are then in the custody of the law. (q) 4.E.6.tit.distres.74. F.N.B.100.E.

(r) But if a man distreyn cattle for damage feasant, and put them in the Pound, and the Owner that had common there make fresh suit, and find the door unlocked, he may justifie the taking away of the cattle in a parco fracto. (r) 3.E.3.tit.trans.11.

(s) If the Owner break the Pound, and take away his goods, the party distreyning may have his Action de parco fracto, and he may also take his goods that were distreyned wheresoever he find them, and impound them again. (s) 34.H.6.18.

It is called a writ de parco fracto of these words in the writ (t) Parcum illum vi & armis fregit. And the form thereof appears in the Register and F.N.B. (t) Regist.F.N.B.100.101

But it is to be observed that for the Rent due the last day of the Term, the lessor cannot distreyn because the Term is ended, and therefore some use to reserve the last half years Rent, at the Feast of the Nativity of Saint John Baptist before the end of the Term, so as if the Rent be not then paid, he may distreyn between that and Michaelmas following.

¶ *Action de debt.* Note a diversity between a Rent reserved upon a lease for years, reserving a yearly Rent: The lessor may have several Actions of Debt for every years Rent. But upon a bond or contract for payment of several sums, no Action of Debt lieth till the last day be past. But otherwise it is of a Recognizance, which see at large and the reason thereof cap. Releases Sect. 512. 513. (u) Note that the Lord shall not have an Action of Debt for reliefe or for estuage due unto him, because he hath other remedy, but his Executors or Administrators shall have an Action therefore, because it is now become as a Flower fain from the stock, and they have no other remedy. Neither shall the Lord have an Action of Debt for aid, pur file marier, or faire fits Chivaler, for the cause aforesaid. (u) 7.H.6.13.lib.4.fo.49. Lib.3.fol.16.34.E.1.tit. avowrie 233.32.H.8.Br. relief 11.F.N.B.82.83. Glanvil.lib.9.cap.35. Fleta lib.2.cap.40.& lib. 3.cap.14. Bracton lib.2.fol.36. W.1.cap.35.25.E.3.cap. 21.Britton.fol.57.& 70.

¶ *Mes en tiel case il covient que le lessor soit seisie de mesmes les tenements al temps del lease, car est bone plea pur le lessee a dire que le lessor navoit riens en les tenements al temps del lease.* And the reason of this is, for that in every contract there must be quid pro quo, nor any thing for which he should pay any Rent. And in that case he may also plead, that the lessor non dimisit, and give in evidence the other matter.

¶ *Si* (x) *non que le lease soit per fait indent, &c.* If the lease be made by deed indented, then are both parties concluded, (y) but if it be by deed poll the lessee is not estopped to say that the lessor had nothing at the time of the lease made, A. lessee for the life of B. makes a lease for years by deed indented, and after purchase the reversion in fee. B. dieth, A. shall avoid his own lease, for he may confess and avoid the lease which took effect in point of interest, and determined by the death of B. But if A. had nothing in the land, and made a lease for years by deed indented, and after purchase the land, the lessor is as well concluded, as the lessee to say that the lessor had nothing in the land, and here it worketh only upon the conclusion, and the lessor cannot confess and avoid as he might in the other case (z) If a man take a lease of land by deed indented reserving a Rent, the lessee is concluded. (a) But if a man take a lease of the herbage of his own land by Deed indented, this is no conclusion, to say that the lessor had nothing in the land, because it was not made of the land it self: (b) but if a man take a lease for years of his own land by deed indented, the estoppel doth not continue after the term ended. For by the making of the lease the estoppel doth grow, and consequently by the end of the lease, the estoppel determines, (c) and that part

(x) 45.E.3.7.20.E.4.10. 34.H.6.48 35.H.6.34. 9.H.6.35.11.H.4.22. (y) 2.E.2.Estop.253. 39.E.3.13. Pl.Com.434.18.E.3.16. 15.E.3.Estop.236. 14.H.4.32. (z) 14.H.6.23.8.H.4.7. (a) Resolve.Pasch.2.Eliz. in Communi Banco. (b) Mich.31.& 32.Eliz.in Communi Banco adjudg in Londons case. (c) 38.H.6.24.30.E.3.21.

part of the Indenture which belonged to the leſſee, both after the term ended, belong to the leſſor, which ſhould not be if the eſtoppel continued.

Sect. 59.

ET eſt aſcavoir, Que en leaſe pur terme de ans per fait ou ſans fait, il ne beſoygne aſcun livere de Seiſin deſtre fait al Leſſee, mes il poit entrer quant il voet p force de meſme le Leaſe. Mes des Feoffments faits en pais, ou dones en le Taile, ou leaſe pur terme de vie, en tiels caſes ou Franktenement paſſera, ſi ceo ſoit per fait ou ſauns fait, il covient aver un livery de ſeiſin.

AND it is to be underſtood, That in leaſe for years by deed or without deed there needs no livery of ſeiſin to be made to the Leſſee, but he may enter when he will by force of the ſame leaſe. But of Feoffments made in the Country, or gifts in Taile, or Leaſe for term of life, in ſuch caſes where a Freehold ſhall paſſe, if it be by Deed, or without Deed, it behoveth to have livery of Seiſin.

Livery de Seiſin. Traditio, or deliberatio ſeiſinæ is a ſolemnity that the Law requireth for the paſsing of a Freehold of Lands or Tenements by delivery of Seiſin thereof. 18.E.3.fo.16.41.E.3.17. 40.Aſſ.10.2.Aſſ.1.2.E.3. 4.43.E.3.Feoff.51.Pl. Com.25.a.& 303.b. Vide Sect.66.

(b) Intervenire debet ſolennitas in mutatione liberi tenementi ne contingat donationem deficere pro defectu probationis. (b) Bract.li.2 ca.15.

And there be two kinds of livery of ſeiſin, viz. a livery in (c) Deed, and a livery in Law. A livery in Deed is when the Feoffor taketh the ring of the door, or turf or twig of the land, and delivereth the ſame upon the land to the Feoffee in name of ſeiſin of the land, &c. per hoſtium & per haſpam & annulum vel per fuſtem vel bacculum, &c. (c)Bract.li.2.ca.15.& 18. Brit.ca.33.in fine fo.87. Flet.li.3.ca.15.

A. ſeiſed of an houſe in fee, and being in the houſe, (d) ſaith to B. I demiſe to you this houſe for term of my life, (d) Li.6.fo.26.Sharps caſe.

this is a good begynning to limit the ſtate, but here wanteth livery. A livery in Deed may be done two manner of wayes by a ſolemn act and words, as by delivery of the ring or haſp of the door, or by a branch or twig of a tree, or by a turf of the land, and with (e) theſe or the like words, the Feoffor and Feoffee both holding the deed of Feoffment, and the ring or the door, haſp, branch, twig, or turf: and the Feoffor ſaying, Here I deliver you ſeiſin and poſſeſsion of this houſe, in the name of all the lands and Tenements contained in this Deed, according to the form and effect of this Deed. Or by words without any ceremony or Act, as the Feoffor being at the houſe door, or within the houſe, Here I deliver you ſeiſin and poſſeſsion of this houſe, in the name of ſeiſin and poſſeſsion of all the lands and Tenements contained in this Deed, Et ſic de ſimilibus, or, enter you into this houſe or land, and have and enjoy it according to the Deed; or, Enter into the houſe or land, and God give you joy, or, I am content you ſhall enjoy this land according to the Deed, or the like. For if words may amount to a livery within the view, much more it ſhall upon the land. But if a man deliver the Deed of Feoffment upon the land, this amounts to no livery of the land, for it hath another operation to take effect as a Deed: but if he deliver the Deed upon the land in name of ſeiſin of all the lands contained in the Deed, this is a good livery: and ſo are other books intended that treat hereof, that the Deed was delivered in name of ſeiſin of that land. Hereby it appeareth, that the delivery of any thing upon the land in name of ſeiſin of that land, though it be nothing concerning the land, as a Ring of Gold, is good, and ſo hath it been reſolved by all the Judges, and ſo of the like. (e) See of this more. Sect.60. 41.E.3.17.b.41.Aſſ.p.10. 38.Aſſ.p.2.38.E.2.11. 39.Aſſ.p.12.26.Aſſ.39. 27.Aſſ.p.61. 18.E.3.16. Li.6.fo.26.Sharps caſe. 43.E.3.tit.Feoff.51. 35.H.8.Feoffm.Br. 50.E.3.Rot.Parl.nu.30.

If divers parcels of land be conteyned in a Deed, and the Feoffor delivers ſeiſin of one parcel according to the Deed, all the parcels do paſs, albeit he ſaith not (in name of all, &c.) becauſe the Deed containeth all. And ſo if there be divers Feoffees, and he make livery to one according to the Deed, the land paſſeth to all the Feoffees, and yet the plainer way is to ſay (in the name of the whole, or of all the Feoffees.) 13.E.3.Eſtop.177.

If a man make a charter in Fee, and deliver ſeiſin for life ſecundum formam cartæ, the whole Fee ſimple ſhall paſs, for it ſhall be taken moſt ſtrongly againſt the Feoffor. Note that theſe words (Secundum formam cartæ) are underſtood according to the quantity and quality of the eſtate contained in the Deed. If a man make a leaſe for years by Deed, and de- Ibidem. 7.E.4.25.29.Aſſ.40. 10.Aſſ.19.43.Aſſ.20.

liver

livery ſeiſin according to the form and effect of the Deed; yet he hath but an eſtate for years and the livery is voyd as Littleton ſaith. So if A. by Deed give land to B. to have and to hold after the death of A. to B. and his heirs, this is a voyd Deed, becauſe he cannot reſerve to himſelf a particular eſtate, and conſtruction muſt be made upon the whole Deed, and if livery be made according to the form and effect of the Deed, the livery alſo is voyd, becauſe the livery referreth to a Deed that hath no effect in law, and therefore it cannot work ſecundum formam & effectum cartæ. And ſo it was adjudged, & ſic de ſimilibus. * And it is to be obſerved that neither the Feoffor being abſent, can make livery, nor the Feoffee being abſent can take livery, but by warrant of Attorney, by Deed, and not by parol becauſe it concerneth matter of freehold.

Mich. 33. & 34. Eliz. in the Kings Bench inter Hogge & Croſſe for lands in London. Vid. Pl. Com. 395. * See more of this, Sect. 66. 11. H. 4. 71. 19. Aſſ. 9. 19. H. 8. 9. b.

Bridgewaters caſe.

Vide Sect. 1. in Bridgewaters caſe, where a man hath a moveable eſtate of Inheritance, for example there put, in 13. Acres: The Queſtion is where livery ſhall be made. Firſt, if they be parcel of a Mannor, they may paſs by the name of the Mannor, but if they be in groſs then the charter of Feoffment muſt be of 13. Acres, lying and being in the Meadow of 80. Acres, generally without bounding or deſcribing of the ſame incertainty, and livery of the ſeiſin of any 13. Acres allotted to the Feoffee for a year ſecundum formam cartæ is a good livery to paſs the content of 13. Acres whereſoever the ſame lie in that Meadow. In the ſecond caſe where one entire Mannor is ſeparate and divided, as is aforeſaid, there is no queſtion but the livery muſt be made of that Mannor, but in the other caſe where two Mannors are ſeparate, and diſ[illegible] alternis vicibus, there the charter of Feoffment muſt be made of both, and livery in the Mannor which he is ſeiſed of in any one year ſecundum formam cartæ, and the next year in the other ſecundum formam cartæ: for there are two diſtinct Mannors, and ſeveral eſtates in them.

Vid. Sect. 1.

18. E. 3. 11. 38. Aſſ. p. 2. 43. Aſſ. p. 20. Temps H. 8. Tit. Feoffments Br. 70. 18. E. 3. 16. b. 28. H. 8. F. 18. 9. E. 4. 39. per Moyle. Bract. lib. 2. cap. 18. & lib. 4. fo. 225. 2. (a) 9. E. 4. 39. 38. E. 3. 11. (b) 9. E. 4. 28. 40. 5. H. 7. 9. 8. H. 6. tit. Pleint. 1. 11. H. 4. 32. 11. E. 3. Aſſ. 86 (c) 38. Aſſ. p. 23.

A livery in law is when the Feoffor ſaith to the Feoffee being in the view of the houſe or land, (I give you yonder land to you and your heirs, and go enter into the ſame, and take poſſeſſion thereof accordingly,) and the Feoffee doth accordingly in the life of the Feoffor enter, this is a good Feoffment, for ſignatio pro traditione habetur. And herewith agreeth Bracton, Item dici poterit, & aſſignari quando res vendita vel donata ſit in conſpectu, quam venditor & donator dicit ſe tradere: And in another place he ſaith, in ſeiſina per effectum & per aſpectum. But if either Feoffor or the Feoffee die before entry the livery is voyd. And livery within the view is good where there is no Deed of Feoffment. (a) And ſuch a livery is good albeit the land lie in another country. (b) A man may have an Inheritance in an upper chamber, though the lower buildings and ſoile be in another, and ſeeing it is an Inheritance corporeal it ſhall paſs by livery. (c) A man maketh a charter of Feoffment and delivers ſeiſin within the view, the Feoffee dares not enter for fear of death, but claims the ſame, this ſhall veſt the Freehold and Inheritance in him; albeit by the livery no eſtate paſſed to him, neither in Deed, nor in law ſo as ſuch a claim ſhall ſerve, aſwell to veſt a new eſtate and right in the Feoffee, as in the common caſe to revеſt an ancient eſtate and right in the diſſeiſee, &c. as ſhall be ſaid hereafter more at large in the chapter of continual claim. And ſo note a livery in law ſhall be perfected and executed by an entry in law. (d) If a man be diſſeiſed, and make a Deed of Feoffment, and a letter of Attorney to enter and take poſſeſſion, and after to make livery ſecundum formam cartæ, this is a good Feoffment albeit he was out of poſſeſſion at the time of the charter made for the Authority given by the letter of Attorney is executory, and nothing paſſed by the delivery of the Deed till livery of ſeiſin was made. And in ancient letters of Attorney power is given to others to take poſſeſſion for the Feoffor. But if a man be diſſeiſed, and make a writting of a leaſe for years and deliver the Deed, and after deliver it upon the ground, the ſecond delivery is voyd, for the firſt delivery made it a Deed, and for that the leaſe for years muſt take effect by the delivery of the Deed, therefore the Deed delivered when he was out of poſſeſſion was voyd. But ſo it is not of a charter of Feoffment, for that takes effect by the livery and ſeiſin. But if the leſſor had delivered it as an eſcrowe, to be delivered as his Deed upon the ground, this had been good.

(d) Hill. 37. Eliz. Rot. 620. in Com. Banco, inter Brown & Terrey adjudged. Dyer 16. Eliz. 234. 3. Eliz. Dyer 131.

A man makes a leaſe for years and after makes a Deed of Feoffment and delivers ſeiſin, the leſſee being in poſſeſſion and not aſſenting to the feoffment, this livery is voyd, for albeit the Feoffor hath the freehold and Inheritance in him, yet that is not ſufficient, for a livery muſt be given of the poſſeſſion alſo: but if the leſſee be abſent, and hath neither wife nor ſervants (though he hath cattel) upon the ground the livery of ſeiſin ſhall be good.

Lib. 3. fol. 35. inter Jennings & Bragge.

If a man be ſeiſed of an houſe, and of divers ſeveral cloſes in one county in fee, and makes a leaſe thereof for years, and afterward maketh a feoffment in fee of the ſame, and makes livery of ſeiſin in the cloſes, (the leſſee or his wife or ſervants then being in the houſe) the livery is voyd for the whole: for the leſſee cannot be upon every parcel of the land to him demiſed, for the preſervation and continuance of his poſſeſſion therein. And therefore his being in the houſe, or upon any part of the land to him demiſed, is ſufficient to preſerve and continue his poſſeſſion in the whole, from being ouſted or diſpoſeſſed.

Lib. 2. fo. 31. 32. Beriſworths caſe.

Now

Note a great diversity, when a man hath two wayes to pass lands, and both of the wayes be by the common law, and he intendeth to pass them by one of the wayes, yet ut res magis valeat it shall pass by the other. But where a man may pass lands either by the common law, or by raising of an use, and letting it by the statute, there in many cases it is otherwise. For example, If a man be seised of two Acres in fee, and letteth one of them for years, and intending to pass them both by feoffment, maketh a Charter of Feoffment, and maketh livery in the Acre in possession, in name of both, only the Acre in possession passeth by the livery. Yet if the lesse attorn, the Reversion of that Acre shall pass by the Deed and Attornment, for he is in by the common law, and in the per in both, and so in the like. But otherwise it is, if the father make a charter of feoffment to his son, and a letter of Attorney to make livery, and no livery is made, yet no use shall rise to the son, because he should be in by the statute in another degree, viz. in the post, and the intention of the parties work much both in the raising and direction of uses. So if Cesty que use, and his feoffees had joyned in a feoffment after the statute of 1. R. 3. &c. it had been the feoffment of the feoffees, and the confirmation of Cesty que use, for the state at the common law shall be preferred. So to conclude this Point, Of Freehold and Inheritance, some be corporeal, as houses, &c. lands, &c. these are to pass by livery of seisin, by Deed or without Deed; some be incorporeal, as Advowsons, Rents, Commons, Estovers, &c. these cannot pass without Deed, but without any livery. And the law hath provided the Deed in place or stead of a livery. And so it is if a man make a lease, and by Deed grant the Reversion in fee, here the Freehold with Attornment of the lessee by the Deed doth pass, which is in lieu of the livery. See Bract. lib. 2. cap. 18. Et est traditio de re corporali de persona in personam de manu, &c. gratuita translatio, & nihil aliud est traditio in uno sensu, nisi in possessionem inductio, de re corporali; & ideo dicitur, quod res incorporales non patiuntur traditionem sicut ipsum jus quod rei sive corpori inhæret, & quia non possunt, res incorporales possideri sed quasi, ideo traditionem non patiuntur, &c.

7.E.4.20.2. per touts les Just. 11.H.4.71.Pl Com. 152.10.L.4.3.

Lib.2.fol.35.36. Sir R. Heywards case.

1.R.3.c2.1.21.H.7.

This ancient manner of conveyance by feoffment, and livery of seisin, doth for many respects exceed all other conveyances. For (as hath been said) if the Feoffor be out of possession, neither Fine, Recovery, Indenture of bargain and sale inrolled, nor other conveyance, doth avoyd an estate by wrong, and reduce clearly the estate of the Feoffee, and make a perfect Tenant of the Freehold, but only livery of seisin upon the land: the other conveyances being made off from the ground, do sometimes more hurt than good, when the Feoffor is out of possession. And yet in some cases a Freehold shall pass by the common law without livery of seisin: As if a house or land belong to an Office by the Grant of the Office by Deed, the house or land passeth as belonging thereunto. So if a house or chamber belong to a corody, by the Grant of a corody, the house or chamber passeth. A Freehold may by custome be surrendred without livery, as hereafter shall be said: and so of Assignment of Dowre ad ostium Ecclesiæ, or otherwise, and by exchange a Freehold may pass without livery, as hereafter shall be said in this chapter.

Lib.2.fo.55.Bucklers case.

1.H.7.28. 8.H.7.4.

31.H.6.16.8.H.7.4. M.31.E.1.coram Rege. Ranulph.Huntingfels case.

3.E.3.Coron.310. 11.H. 4.83.V.Sect.74.

Sect. 60.

¶ MEs si home lessa terres ou Tenements per fait, ou sans fait, a terme des ans, le remainder ouster a un auter pur terme de vie, ou en taile, ou en fee donque en tiel case il covient que le lessor fait un liverie de seisin a le lessee p terme de ans, ou autrement riens passa a eux en le remain- count q̄ le lessee ent en

BUt if a man leteth lands or tenemẽts by Deed or without Deed for term of years, the remainder over to another for life, or in taile, or in fee; in this case it behooveth, that the Lessor maketh livery of seisin to the Lessee for years, otherwise nothing passeth to them in the remainder, although that the Lessee enter into the

¶ *Per fait ou sans fait.* For nothing that the remainders take effect by livery, there needs no Deed.

¶ *Le remainder* is a residue of an estate in land depending upon a particular estate, and created together with the same, and in Law-Latin it is called Remanere.

22.H.6.1.10.E.4.1. 18.E.4.13.

¶ *Fait un livery de seisin al lessee.* This livery is not necessary in this case for the Lessee plaintife, because he hath but a term for years; but it is for the benefit of them in the rem', so as the livery to the Lessee shall endure for the benefit of them in the rem': for the li-

very

very of the poſſeſſion could not be made to the next in remainder, becauſe the poſſeſſion belonged to the Leſſee for years, and for that the particular term, and all the remainders make in law but one eſtate, and take effect at one time; therefore the livery is to be made to the Leſſee. But if a leaſe for years without deed be made to A. and B. the remainder to C. in fee, and livery is made to A. in the abſence of B. in the name of both; it ſeemeth the livery is good to veſt the remainder, and there is a diverſity, between two joynt Attornies to receive livery for another, and livery and ſeiſin is made to one of them, in the name of both, this is clearly void, becauſe they had but a mere and bare Authority, and they both do in law make but one Attorney, unleſs the warrant be joyntly and ſeverally, but the leſſee for years hath an intereſt in the land. Again, if A. is to make a feoffment to B. and C. and their heirs without deed, and A. makes livery to B. in the abſence of C. in the name of both, and to their heirs; this livery is void to C. becauſe a man being abſent cannot take a freehold by a livery, but by his Attorney being lawfully authorized to receive livery by deed, unleſs the feoffment be made by deed, and then the livery to one in the name of both is good.

les tenements. Et ſi le termor en tiel caſe entra devant aſcun liverie de ſeiſin fait a luy, donque eſt le franktenement & auxy le reverſion en le leſſor: Mes ſi il fait liverie de ſeiſin a le leſſee, donque eſt le franktenement obe le fee a eux en le remainder, ſolonque le forme del grant & le volunt del Leſſor.

tenements. And if the Termour in this caſe entreth before any livery of ſeiſin made to him, then is the Freehold and alſo the reverſion in the Leſſor. But if he maketh livery of ſeiſin to the Leſſee, then is the Freehold together with the fee to them in the remainder according to the form of the Grant, and the will of the Leſſor.

10.E.4.1.12.E.4.16. 15.E.4.18.22.E.4.35. 40.E.3.10.41. Temps H.8. Feſſments 72. 6.H.4.2.b.Litt.153. 8.H.7.13.

Note there is a diverſity between livery of ſeiſin of land, and the delivery of a deed, for if a man deliver a Deed without ſaying of any thing, it is a good delivery, but to a livery of ſeiſin of land, words are neceſſary; as taking in his hand the Deed, and the Ring of the door (if it be of an houſe) or a Turf or Twig (if it be of land) and the Feoffee laying his hand on it, the Feoffor ſay to the Feoffee, Here I deliver to you ſeiſin of this houſe, or of this land, in the name of all the land, contained in this Deed, according to the form and effect of the Deed, (as hath been ſaid) and if it be without Deed, then the words may be, Here I deliver you ſeiſin of this houſe or land, &c. to have and to hold to you for life, or to you and the heirs of your body, or to you and your heirs for ever as the caſe ſhall require.

Ruth.cap.4.verſe.7.8. Deut.25.9.10.

When the Kinſman of Elemelech gave unto Boas the parcel of land that was Elimelechs, he took off his ſhoot, and gave it unto Boas in the name of ſeiſin of the land (after the manner in Iſrael) in the preſence, and with the teſtimony of many witneſſes.

Gen.23.verſe 11.

And when Ephron infeoffed Abraham of the field of Machepela, he ſaid to him, Agrum trado tibi, &c. I deliver this field to thee.

A man makes a leaſe for years to A. the remainder to B. in fee, and makes livery to A. within the view: this livery is void, for no man can take by force of a livery within the view, but he that taketh the freehold himſelf.

¶ *Et ſi le termor en tiel caſe enter devant aſcun liverie fait, &c.* By the entry of the leſſee he is in actual poſſeſſion, and then the livery cannot be made to him that is in poſſeſſion, for Quod ſemel meum eſt, amplius meum eſſe non poteſt. But if the leſſor and leſſee come upon the Ground, of purpoſe for the leſſor to make, and for the leſſee to take livery, there his entry veſts no actual poſſeſſion in him until livery be made; for (a) Affectio tua nomen imponit operi tuo. And therefore if it be agreed between the Diſſeiſor and Diſſeiſee, that the Diſſeiſee ſhall releaſe all his Right to the Diſſeiſor upon the land, and accordingly the Diſſeiſee entereth into the land, and delivereth the Releaſe to the Diſſeiſor upon the land, this is a good Releaſe, and the entry of the Diſſeiſee, being for this purpoſe, did not avoid the Diſſeiſin, for his intent in this caſe did guide his entry to a ſpecial purpoſe. And ſo was it reſolved (b) by Sir James Dyer, and the whole court of common pleas, Paſch. 18. Eliz. upon evidence which I my ſelf heard and obſerved. But if the Diſſeiſor infeoffe the Diſſeiſee and other, albeit the Diſſeiſee came to take livery, yet when livery is made, the Diſſeiſee is remitted to the whole in Judgment of Law, as ſhall be ſaid more at large in the Chapter of Remitter in his proper place.

(a) Bracton lib.2.

(b) P.19.Eliz.in Communi Banco. Pl.Com.in Aſſ. de freſh force.91.29.Aſſ.26. 43.Aſſ.p.3. 3.H.6.19. in fermdon.

Sect.

Sect. 61.

¶ ET ſi home voile faire feoff, per fait ou ſans fait, de treſ ou tenements que il ad en pluſors Villes en un Countie, le liverie de ſeiſin fait en un parcel de les tenements en un ville en le noſme de touts ſuffiſt pur touts les autres terres & tenements compzehendes deins ñ r feoffment, en toutz les autres villes deins ñ le countie. Mes ſi home fait un fait de feoffement des terres ou tenements en divers Counties la il covient en chelcun Countie aver un liverie de ſeiſin.

AND if a man will make a feoffment by deed or without deed, of lands or tenements which he hath in divers Towns in one County, the livery of ſeiſin made in one parcel of the Tenements in one Town in the name of all the reſt is ſufficient for all other the lands and tenements cõprehended within the ſame feoffment in all other the Towns in the ſame county, but if a man maketh a Deed of Feoffment of Lands or Tenements in divers Counties, there it behooveth in every County to have a livery of ſeiſin.

¶ EN *un counties.* A county is fetched from the French, and Shire from the Saxon. For Styran in the Saxon tongue ſignifieth partiri, becauſe every county or ſhire is divided and parted by certain metes and bounds from another, and in Latine is called Comitatus a comitando, for accompanying together. And for as much as the men of one county do not accompany together with men of another county at county courts, turnes, leets, and other courts, therefore in Judgment of Law they ſhall take no notice of a livery in another county to paſs any lands in their own County. But of this more ſhall be ſaid hereafter. 44.E.3.21.

Sect. 62.

¶ ET en aſcun cas home averra per le Grant dun auter fee ſimple, fee taile, ou frankten. ſans livery de ſeiſin. Sicome deux homes ſont, & chelcun deux eſt ſeiſie dun quantitie de terre deins un countie, & lun granta ſa terre a lauter en eſchange pur la terre que lauter ad, & en Meſme le Manner lauter granta ſa ter-

AND in ſome caſe a man ſhall have by the grant of another a fee ſimple, fee tail, or freehold without livery of ſeiſin. As if there be two men and each of them is ſeiſed of one quantity of Land in one County, and the one granteth his Land to the other in exchange for the Land which the other hath, and in like mãner the other gran-

¶ HEre Littleton putteth a caſe where Freehold, &c. ſhall paſs without livery of ſeiſin, and thereupon putteth the caſe of an exchange of lands in one county that is good by deed or without deed without any livery, but if it be in ſeveral counties there muſt be a Deed. Alſo of things that lie in Grant, as Advowſons, Rents, Commons, &c. an exchange of them albeit they be in one county, is not good; unleſs it be by Deed; and therefore Littleton putteth his caſe warily of Land. And in caſe of a Fine which is a Feoffment of Record, of a Deviſe by a laſt will, of a ſurrender, of a releaſe or confirmation to a 45.E.3.21.3.E.4.10. 9.E.4.21.7.H.4.1. 8.H.7.4. 28.H.6.a

lesse for years, or at will. In all these and some other cases a freehold, &c. (as hath been said) may pass without livery. But this word (eschange) which our Author here useth, is so appropriated by law, to this case, as it cannot be expressed by any Periphrasis or circumlocution.

vide Sect. 1.

¶ *En ceo case chescun poet enter, &c.* For by the exchange the parties, albeit the lands be all in one County, have no freehold in Deed or law in them before they execute the same by entry; and therefore if one of them dieth, before the exchange be executed by entry, the exchange is void; for the heir cannot enter and take it as a Purchasor, because he was named only to take by way of limitation of estate in course of discent.

9.E.4.38.39.45.E.3.20. 21.45.E.3.Exchange 10.

re a le primer grantor en eschange pur la terre que le primer grantor ad, en ceo cas chescun poit enter en fauter terre issint mise en eschange sans alcun livery de seisin, & tiel eschange fait per parolx de tenents deins meisme le Countie sans escript, est Assets bone.

teth his Land to the first Grantor in exchange for the Land which the first Grantor hath. In this Case each may enter into the other lands, so put in exchange without any livery of seisin. And such exchange made by paroll of tenements within the same County without writing, is good enough.

Sect. 63.

¶ This is evident enough. But of what things an exchange may be made (which was a conveyance frequent in former times) is to be seen, and herein many things are to be observed.

¶ ET si les terres ou tenements, soient en divers counties, cest alcavoire ceo que lun ad est un Countie & ceo que lauter ad est en auter Countie la il covient de aver un fait indent destre fait enter eux de tiel eschange.

And if the lands or tenements be in divers Counties, *viz.* that which the one hath in one County, and that which the other hath in another County, there it behoveth to have a deed indented, made between them of this exchange.

(a) 30.E.1.Esch.15. 3.E.4.10. 9.E.4.21. 14.H.8.20.

First, That the things exchanged (a) need not to be in esse at the time of the exchange made. (As if I grant a Rent newly created out of my lands in exchange, for the Manor of dale, this is a good exchange.

(b) 6.E.56.30.E.1.Es.16. 16.E.3.Esch.2. 7.H.4.34.3.E.4.11. (c) 9.E.4.21.9.E.3.56. 21..E3.6.

(b) Secondly, There needeth no transmutation of possession, and therefore a release of a Rent, or Estovers, or right to land in exchange for land is good.

The things (c) exchanged need not be of one nature, so they concern lands or Tenements, whereof Littleton here speaketh. As land for Rent or common, or any other Inheritance which concern lands or tenements, or spiritual things, as Tythes, &c. for temporal, and tenure by a Divine Service for a temporal Signiory, &c. But Annuities or such like which charge the person only, and do not concern lands or tenements, cannot be exchanged for lands or tenements.

Sect. 64.65.

Estates; Vide Sect.650.

¶ *En eschange, il covient que les estates soient egales, &c.* Equality in lands is threefold, viz. First equality in value:

¶ ET nota que en eschange il covient q̄ les estates soint egales, que

And note that in exchanges it behooveth that the estates which both par-

am-

ambideux tiels parties averont en les tres iſſint eſchanges, car ſi lun voit & grant que lauter averoit la terre en fee taile, pur le terre que il averoit del grant de le auter en fee ſimple, coment que laut ſoit agree a cel, ceſt eſchange eſt voide, pur ceo q̄ les eſtates ne ſont my egales.

ties have in the lands ſo exchanged, be equal, for if the one willeth and grant that the other ſhal have his lād in fee taile for the land which he hath of the grant of the other infee ſimple, although that the other agree to this, yet this exchange is void, becauſe the eſtates be not equal.

Secondly, equality in quantity of eſtate given and taken. Thirdly, equality in quality or manner of the eſtate given and taken. But as Littleton after ſaith, Equality in value of lands in an exchange is not requiſit: ; neither equality in the quality or manner of the eſtate. And therefore if two joint tenants give lands joyntly to two men, & their heirs, and the other in exchange of other lands to them and their heirs in common, this is a good exchange, and yet the manner of their eſtates is not equal, for the eſtate of one party is joynt, and the other in common. And ſo it is if two men give lands in exchange to A. and his heirs for lands from A. to them two and their heirs, though the one party have a joint eſtate, and the other a ſole eſtate, yet the exchange is good. The like is if the one land be of a defeaſible title, and the other of an undefeaſible title, yet the exchange is good till it be avoided.

(a) An exchange with the King is good, and yet the King is ſeiſed in his politick capacity, and the ſubject in his natural capacity. But equality of the quantity of the eſtate is requiſite, as it appeareth clearly in the caſes put by Littleton. (b) But therein it is to be obſerved that it is not neceſſary that the parties to the exchange be ſeiſed of an equal eſtate at the time of the exchange made: for if tenant in taile or a husband, ſeiſed in the right of his wife, exchange Land, and both by the exchange give a fee ſimple, this is good until it be avoided by the iſſue in taile, or by the wife after the death of the husband. (d) So as Littleton ſaith that in exchanges it behoveth that the eſtates which both parties have in the land ſo exchanged be equal, is as much to ſay as that the ſtate reciprocally given in exchange ought to be equal. (e) But in a partition the eſtates allotted to either party need not to be e-

(a) Bract. lib. 5. fo. 389. 17. E. 3. 12. b. 4. H. 4. 2.

(b) 14. H. 6. 6. E. 2. Exch. 12. 8. E. 2. Cui in vita 28. 10. E. 2. Exch. 12. 16. E. 3. Exch. 2. 3. E. 3. 19. 12. H. 4. 12. 21. H. 6. 25. 13. E. 4. 3.

(d) 44. E. 3. 20. 38. E. 3. 15. 39. E. 3. 1. 9. E. 4. 21. 7. H. 4. 17. 30. E. 1. tit. bre. 884. 30. E. 1. tit. exchange 15.

(e) F. N. B. 62. m

Ensi ñ le manner eſt, lou il eſt grant & agree enter eux, que lun avera en lun terre fee taile, & lauter en lauter terre forſ̄ a terme de vie, ou ſi lun avera en lun terre fee taile general, & laut en laut terre fee taile eſpecial, &c. Iſſint touts foits il covient que en eſchange les eſtates dambideux parties ſoient egales ceſt aſcavoire, ſi lun ad fee ſimple en lun terre, que lauter avera tiel eſtate en lauter terre, & ſi lun ad fee taile en lun terre il covient que lauter aūa ſemblable eſtate en lauter terre, &c. & ſic de aliis ſtatibus, mes neſt my riens a charger del egal value des terres, car

IN the ſame manner it is, where it is granted & agreed between them, that the one ſhall have in the one land fee taile, and the other in the other land but for term of life, or if the one ſhall have in the one land fee taile general, and the other in the other land fee taile eſpecial, &c. ſo always it behoveth that in exchange the eſtates of both parties be equal, *viz.* if the one hath a fee ſimple in the one land that the other ſhall have like eſtate in the other land, and if the one hath Fee taile in the one Land the other ought to have the like eſtate in the other land &c. & ſo of other eſtates, but it is nothing to charge of the equal

qual, as ſhall be obſerved in his proper place.

To ſhut up this point, There be five things neceſſary to the perfection of an exchange. 1. That the eſtates given be equal. 2. That this word (excambium exchange) be uſed (f) which is ſo individually requiſite, as it cannot be ſupplied by any other word or deſcribed by any circumlocution: and herewith agreeth Littleton afterwards in this chapter Sect. In the book of Domeſday I find, Hanc terram cambiavit Hugo Briccuino quod modo tenet comes Meriton, & ipſum ſcambitum valet duplum.

Hugo de Belcamp. pro eſcambio de warres.

3. That there be an execution by entry or claim in the life of the parties, as hath been ſaid.(g) 4. That if it be of things that lie in grant, it muſt be by Deed. (h) 5. If the lands be in ſeveral Counties there ought to be a Deed indented, or if the thing lie in grant albeit they be in one County.

(i) If an infant exchange lands, and after his full age occupy the lands taken in exchange, the exchange is become perfect, for the exchange at the firſt was not void (becauſe it amounted to a livery, and alſo in reſpect of the recompenſe) but voidable.

(f) 9.E.4.21.25.H.6.56. 19 H.6.27.44.E.3.24. 50.Aſſ. Dorſet. Wadon. Bedf. Sandeia.

(b) 9.E.4.39. 15.E.4.3. 45.E.3.30.

45.E.3.eſchange 1.

(g) 28.H.6.2.

(h) 45.E.3.20. 7.H.4.11.

(i) 4.E.2.tit.exch.10. 12.H.4.12.

¶ *Coment que lauter agree a cel ceſt eſchange eſt voide.* The agreement of the partits cannot make that good which the law maw maketh void.

coment que la terre lun vault mult pluis que la terre de lauter ceo neſt riens a purpoſe: iſſint que les eſtates pur leſchange fait, ſoient egales. Et iſſint ẽ leſchange ſont deux grants car cheſcun partie grant ſon tre a lauter en eſchange, &c. & en cheſcun de lour grants mention ſerra fayt de leſchange.

value of the lands, for albeit that the land of the one be of a farr greater value than the land of the other, this is nothing to the purpoſe, ſo as the eſtates made by the exchange be equal. And ſo in an exchãge there be two grants, for each party granteth his land to the other in exchange &c. & in each of their grants mention ſhal be made of the exchãge.

Sect. 66.

¶ *Sl home leſſa terre a un auter pur terme dans, Coment que le leſſor moruſt devant, &c.* The reaſon is becauſe the intereſt of the term (as hath been ſaid) doth paſs and veſt in the leſſee before entry, and therefore the death of the leſſor cannot devеſt that which was veſted before.

¶ *Attorney.* Is an ancient Engliſh word, and ſignifieth one that is ſet in the turn, ſtead, or place of another, and of theſe ſome be private (whereof our Author here ſpeaketh) and ſome be publick, as Attorneys at Law, whoſe warrant from his maſter is ponit loco ſuo talem Attornatum ſuum, which ſetteth in his turn or place ſuch a man to be his Attorney.

¶ Item ſi home leſſe terre a un auter pur term dans, coment que le leſſor morust devant que le leſſee enter en les tenements, uncore il poit enter en meſmes les tenements apres le mort le leſſour, pur ceo que le leſſee per force de le leaſe ad droit maintenant daver les tenements ſolonc le forme de le leaſe. Mes ſi home foit un fait de feoffement a un auter, & un letter dattorney a un

ALſo if a man letteth land to another for term of years, albeit the leſſor dieth before the leſſee entreth into the Tenements, yet he may enter into the ſame tenements after the death of the leſſor, becauſe the leſſee by force of the leaſe hath right preſently to have the tenements according to the form of the leaſe: but if a man maketh a deed of Feoffment to another, & a letter of Attorney to

¶ Et

home a deliverer a luy ſeiſin per force de meſme le fait, uncore ſi liverie de ſeiſin ne ſoit fait en la vie celuy que feſoit le fait, ceo ne vault riens, pur ceo que lauter nad pas aſcun droit daver les tents ſolonc le purport de le dit fait, devant le liverie de ſeiſin. Et ſi nul liverie de ſeiſin ſoit fait, donc apres le mort celuy que fiſt le fait, le droit de tiels tenements eſt maintenant en ſon heire ou en aſcun auter.

one to deliver to him ſeiſin by force of the ſame deed, yet if livery of ſeiſin be not executed in the life of him which made the deed, this availeth nothing, for that the other had nought to have the tenements according to the purport of the ſaid Deed before livery of ſeiſin made, & if there be no livery of ſeiſin, then after the deceaſe of him who made the Deed, the right of theſe tenements is forthwith in his heir, or in ſome other.

¶ *Et un lettre dattorney a un home a deliver a luy ſeiſin per force de meſme le fait.* Here firſt it appeareth that the authority to deliver ſeiſin (as hath been ſaid) muſt be by Deed: For Letters dattorney is as much as a warrant of Attorney by Deed, for Letters do ſignifie ſometimes a Deed, as literæ requietancias do ſignifie a deed of Acquittance, and herewith (a) agreeth Britton.

Vid. Sect. 196.

(a) 24.E.3.27.11.H.7.13 Brit. fol. 61.

2. Littleton here ſpeaks generally *a un home*, and few perſons are (b) debarred to be private Attorneys to deliver ſeiſin; for Women, Infants, Femecoverts, perſons Attainted, outlawed, excommunicate, villeins, aliens, &c. may be Attorneys. A feme may by an Attorney to deliver ſeiſin to her husband, and the husband to the wife, and he in the remainder to the leſſee for life.

(b) 21.E.4.18. Br. Feoffments 50. 21.H.6.30. 13.E.3. Attorney 73.

2. It appeareth here that the Attorney muſt (c) purſue his warrant, otherwiſe he doth not deliver ſeiſin by force of the Deed, as Littleton teacheth. Now his authority is twofold, expreſſed in his warrant, and implyed in Law, both which he muſt purſue, any ſtrit of his expreſs authority. A man ſeiſed of black acre and white acre makes a deed of feoffment of both, and a letter of Attorney to enter into both acres, and to deliver ſeiſin of both of them according to the form and effect of the Deed, and he entreth into black acre and delivers ſeiſin ſecundum formam chartæ, this livery and ſeiſin is good, albeit he did not enter into both, nor into one in the name of both; for when he delivereth ſeiſin of one ſecundum formam chartæ, this is tantamount and implyeth a livery of both. So when the feoffment is made to two or more, and the Attorney is to make livery of ſeiſin to both, and the Attorney make livery of ſeiſin to one of the Feoffees ſecundum formam & effectum cartæ, this is good to both, and yet in that caſe he that is abſent may waive the livery. If leſſee for life make a Deed of feoffment and a letter of Attorney to the leſſor to make livery, and the leſſor maketh livery accordingly, notwithſtanding he ſhall enter for the forfeiture, but if leſſee for years make a feoffment in fee and a letter of Attorney to the leſſor to make livery, and he maketh livery accordingly, this livery ſhall bind the leſſor, and ſhall not be avoided by him: for the leſſor cannot make livery as Attorney to the leſſee, becauſe he had no Freehold whereof to make livery, but the Freehold was in the leſſor. If the leſſor make a Deed of feoffment, and a letter of Attorney to the leſſee for years to make livery, and he doth it accordingly, this ſhall not drown or extinguiſh his term, becauſe he did it as a miniſter to another man in another's right, and is accounted in judgment of Law the act of the other and the Feoffee claimeth nothing by him.

(c) 12.Aſſ. pl. 24. 26. Aſſ. 39. 11.H.4. 3.10.H.7. 11.H.7.13.40. Aſſ. 38.

27. Aſſ. 61. 41. Aſſ. 10. 41.E.3.17.

Tr. 7. Eliz. in com. banco.

If one as Procurator or Attorney to another preſent to his own benefice, he puts himſelf out of poſſeſſion, becauſe he cometh in by the induction and inſtitution of the Ordinary. If the tenant deviſe that the Lord ſhall ſell the land, and dieth, and the Lord ſelleth it, the Seigniory remains. But if the Lord or a grantee of a rent charge had diem clauſo extremum of the land, and after the ſtatute of R.3. and before the ſtatute of 27.H.8. Ceſtuy que uſe had made a feoffment in fee of the land, albeit the land paſſes from the feoffees, and his feoffment is warranted by the power given to him by the ſtatute, yet the Seigniory or rent charge is extinct by his feoffment, for that he hath not a bare authority as the Attorney hath.

17.E.3.61.

If a man be diſſeiſed of black acre, and white acre, and a warrant of Attorney is made to enter into both, and to make livery, there if the Attorney enter into black acre only and make livery ſecundum formam cartæ there the livery of ſeiſin is void, becauſe he doth leſs than his warrant

warrant for the eſtate of the diſſeiſor in white acre cannot be deveſted without an entry. But there is a diverſity between an authority coupled with an intereſt, and a bare authority. For example, A cuſtom within a manor time out of mind of man uſed, was to grant certain lands parcel of the ſaid manor in fee ſimple, and never any grant was made to any, and the heirs of his body for life, or for years; and the Lord of the ſaid manor did grant to one by Copy for life, the remainder over to another, and the heirs of his body: And it was (k) adjudged, that the grant and remainder over was good, for the Lord having authoritie by cuſtom, and an intereſt withal, might grant any leſſer eſtate: for in this caſe the cuſtom that enableth him to the greater, enableth him to the leſſer, Omne majus continet in ſe minus. But he that hath but a bare authority, as he that hath a warrant of Attorney, muſt purſue his authority (as hath been ſaid) and if he do leſſe it is void.

(k) Hil. 36. El. Rot. 492. Inter Stanton & Barnes, in Ejectione firma, in the Kings Bench.

2. & 3. Ph. & M. Dyer. 131. 17. El. Dyer. 40.

A man make a leaſe for life, and after make a Charter of feoffment, with a letter of Attorney to deliver ſeiſin, the Attorney enters upon the leſſee, this is ſufficient to convey away the reverſion, for (that it may be ſaid once for all) livery of ſeiſins being to perfect the common aſſurance of lands, is always expounded favourably, ut res magis valeat quam pereat. And all this was adjudged and (l) reſolved by the Court of common Pleas, and after affirmed by all the Judges of the Kings Bench, in a writ of Error.

(l) Paſc. 31. El. Rot. 514. in Com. Banc. inter Carter pl. & Claypole & al. def. In Ejectione firma, & in Briefe de Error. Hil. 32. El. Rot. 791. *Communis error facit jus (ut dicitur) in contrarium.

And it is to be known, that a deed of feoffment beginning Omnibus Chriſti fidelibus, &c. or Sciant præſentes & futuri, &c. or the like, a letter of Attorney may be contained in ſuch a Deed; for one inſtrument may contain divers Deeds to ſeveral perſons, but if it be by Indenture between the Feoffor on the one part, and the Feoffee on the other part, * there a letter of Attorney in ſuch a Deed is not good, unleſs the Attorney be made a party in the Deed indented.

Paſc. 3. El. in Com. Banc. in Yarhams caſe

Now the authority of an Attorney implied in the Law, is, though the warrant be general, to deliver ſeiſin: yet the Attorney cannot deliver ſeiſin within the view, for his warrant is intendable in law of an actual and expreſs livery, and not of a livery in law, and ſo hath it been reſolved. See more hereof here next following.

Uncore ſi liverie & ſeiſin ne ſoit fait en la vie celuy que feſoit le fait. Here albeit the warrant of Attorney be indefinite, without limitation of any time, yet the Law preſcribeth a time. As Littleton here ſaith, in the life of him that made the Deed: but the death not only of the Feoffor, of whom Littleton ſpeaketh but of the Feoffee alſo, is a countermand in Law of the letter of Attorney, and the Deed it ſelf is become of none effect, becauſe in this caſe nothing doth paſs before livery of ſeiſin. For if the Feoffor dieth, the land deſcends to his heir, and if the Feoffee dieth, livery cannot be made to his heir, becauſe then he ſhould take by purchaſe, where heirs are named by way of limitation. And herewith agreeth Bracton, Item oportet, quod donationem ſequatur rei traditio, etiam in vita donatoris & donatorii. Therefore a letter of Attorney to deliver livery of Seiſin after the deceaſe of the Feoffor, is void.

42. H. 6. 6.

Bracton. li. 2. fo. 16. 40. aſſ. pl. 38. 29. H. 6. 7. 2. 14. E. 4. 2. 18. E. 3. 16. b. 11. H. 7. 13. &c.

Fourthly, In all caſes the Attorney muſt purſue the warrant in ſubſtance and effect that he hath to deliver ſeiſin.

Fifthly, All this is to be underſtood of ſole perſon, or of a Corporation or body conſiſting of one ſole perſon, or a Biſhop perſon, &c. But it holdeth not in a corporation aggregate of many perſons capable. And therefore if a Maior and Commonalty make a Charter of feoffment, and a letter of Attorney to deliver Seiſin, the livery of Seiſin is good after the deceaſe of the Maior, becauſe the Corporation never dieth. The like of a Dean and Chapter, Et ſic de ſimilibus.

18. H. 8. 3. 11. H. 7. 19.

Laſtly, If the leſſor by his Deed licence the leſſee for life or years (which is reſtrained by condition not to alien without licence) to alien, and the leſſor dieth before the leſſee doth alien, yet is his death no countermand of the licence, but that he may alien, for the licence exempteth the leſſee out of the penalty of the condition, and it was executed on the part of the leſſor as much as might be. And ſo was it reſolved, Michael. 3. Jacob. in Communi Banco. As if the King doth licence to alien in Mortmain, and dieth, the licence may be executed after.

Mich. 3. Ja. in Com. Banc. F. N. B. 223. 2. E. 3. offi. de Court. 29. Stamf. Prer. 30

Sect. 67.

Si le Leſſee fait Waſt. Waſte, Vaſtum dicitur à vaſtando, of waſting and depopulating: and for that waſte is often alled-

Item ſi Tenements ſoient leſſes a un hõe p̃ term de demy an, ou pur le

Alſo if tenements be let to a man for term of half a year, or for a quarter of a

ger

quarter de un an, &c. En tiel cale, ſi l' leſſee fait waſt, l' leſſor avera envers luy briefe de waſt, & le Briefe dirra, Quod tenet ad terminum annorum: Mes il avera un ſpecial Declaration ſur le veritie de ſon matter, & le Count nabatera le Briefe, pur ceo que il puit aver nul auter briefe ſur le matter.

years, &c. In this caſe if the Leſſee commit waſt, the Leſſor ſhall have a writ of waſte againſt him; and the Writ ſhall ſay, *Quod tenet ad terminum annorū*: but he ſhall have an eſpecial declaration upon the truth of his matter, and the Count ſhall not abate the Writ, becauſe he cānot have any other writ upon the matter.

ged to be in timber, which we call in Latin Maremium, or mareſnium, or mareſmium, it is good to fetch both of them from the original. Firſt Timber is a Saxon word. Secondly, Maremium is derived of the French word Marreim, or Marrei, which properly ſignifieth timber.

An action of waſte doth lie againſt tenant by the Curteſie, tenant in Dower, tenant for life, for years, or half a year, or gardian in chivalrie by him that hath the immediate eſtate of inheritance, for waſt or deſtruction in houſes, gardens, woods, trees, or in lands, meadows, &c. or in eſſe of men to the diſherſon of him in the reverſion, or remainder. There be two kinds of waſts viz. voluntary or actual, and permiſſive. (a) Waſt may be done in houſes, by pulling or proſtrating them down, or by ſuffering the ſame to be uncovered, whereby the ſoars or rafters, plaunchers, or other timber of the houſe are rotten. (b) But if the houſe be uncovered when the tenant cometh in, it is no waſt in the tenant, to ſuffer the ſame to fall down. But though the houſe be ruinous at the tenants coming in, yet if he pull it down, it is waſt unleſs he reedifie it again. (c) Alſo if glaſs windows (though glaſed by the tenant himſelf) be broken down, or carried away, it is waſte, for the glaſs is part of his houſe. And ſo it is of wainſcot, benches, doors, windows, furnaces, and the like, annexed or fixed to the houſe, either by him in the reverſion, or the tenant.

V. Marlb. c. 23. 2. part of the Inſtit.

(a) 34.E.3.Waſt.143.

(b) 40.Aſſ.p.22.2.Mar. Dyer 117.23.H.6.24. 10.H.7.2.44.E.3.44. 29.E.3.33.li.4.fo.63. Herlakendens caſe.

(c) 22.H.6.18. 12.H.8.1. 13.H.7.21. 22.E.4.18. 21.E.4.39. 10.H.7.2. Reg. Judic. 26.

(d) Though there be no timber growing upon the ground, yet the tenant at his peril muſt keep the houſes from waſting. If the tenant do or ſuffer waſte to be done in houſes, yet if he repair them before any action brought, there lieth no action of waſte againſt him; but he cannot plead, Quod non fecit vaſtum, but the ſpecial matter.

(d) 44.E.3.21. 38.Aſſ.1. 4.E.3.Waſt.22. 10.El. Dyer 276. li.5.f.119. in Whelpdales caſe.

A wall uncovered when the tenant cometh in, is no waſte if it be ſuffered to decay. (e) If the tenant cut down or deſtroy any fruit trees growing in the garden or orchard, it is waſte, but if ſuch trees grow upon any of the ground which the tenant holdeth out of the garden or orchard, it is no waſte.

19.E.3.Waſt.30. 44.E.3.44.

(e) 7.H.6.38. 44.E.3.44.

(f) If the tenant build a new houſe, it is waſte, and if he ſuffer it to be waſted, it is a new waſte. (g) If the houſe fall down by tempeſt, or be burnt by lightning, or proſtrated by enemies, or the like, without a default of the tenant, or was ruinous at his coming in, and fall down, the tenant may build the ſame again with ſuch materials as remains, and with other timber which he may take growing upon the ground for his habitation, but he muſt not make the houſe larger than it was. If the houſe be diſcovered by tempeſt, the tenant muſt in convenient time repair it.

(f) 42.E.3.21. 49.E.3.2. 9.H.6.52.17.E.2.Waſt. 118.

(g) Li.4.fo.63. Herlakendens caſe 43.E.3.6. 26.E.3.76. 11.H.4.32. 12.H.4.5. 22.H.6.18. 19.E.3.waſt.30.

(h) If the Tenant of Dove houſe, Warren, Park, Vivary, Piſcaries, or the like, do take ſo many, as ſuch ſufficient ſtore be not left as he found when he came in, this is waſt, and to ſuffer the pale to decay, whereby the Deer are diſperſed is waſt.

(h) Temps E.1.waſt.128. Brit.fo.34.5.R.2.waſt.97 12.H.8.1.Pl.Com.322. 7.H.3.Waſt.141.

And it is to be obſerved, That there is waſte, deſtruction, and exile. Waſt properly is in houſes, gardens, (as is aforeſaid) in timber trees, (viz. Oak, Aſh, and Elme, and theſe be Timber trees in all places) either by cutting of them down, or topping of them, or doing any act whereby the timber may decay. Alſo in countries where timber is ſcant, and Beeches or the like are converted to building for the habitation of man, or the like, they are alſo accounted timber. (i) If the tenant cut down timber trees, or ſuch as are accounted timber, as is aforeſaid, this is waſt, and if he ſuffer the young germins to be deſtroyed, this is deſtruction. (k) So it is if the Tenant cut down underwoods (as he may by law) yet if he ſuffer the young germins to be deſtroyed, or if he ſtub up the ſame, this is deſtruction.

(i) 22.H.6.12.2.9.H.6.1. 66.11.H.6.1.F.N.B 59.m.

(k) 20.E.2.Waſt.32. 10.H.7.2.42.E.3.6.b. 5.E.4.100.41.E.3.waſt. 82. 20.E.3.Waſt.32. 12.E 4.1.

(l) Cutting down of willows, beech, birch, aſpe, maple or the like, ſtanding in the defence and ſafegard of the houſe is deſtruction. (m) If there be a quickſet Fence of white thorn, if the tenant ſtub it up, or ſuffer it to be deſtroyed, this is deſtruction, and for all theſe and the like deſtructions an action of waſt lieth. (n) The cutting of dead wood, that is, Ubi arbores ſint aridæ, mortuæ, cavæ, non exiſtentes maremium, nec portantes fructus, nec folia in eſtate, is

(l) 40.E.3.15.b.& 35. 12.E.4.1.12.H.8.1.b. 10.H.7.2.8.E.2.waſt.111 4.E.6.Waſt.Br.136.

(m) 46.E.3.17.9.H.6.10. 12.H.8.1.

(n) 16.El.Dy. 332.20.E. 3.waſt.32.FN.B.59.m.

no waſt; but turning of trees to coals for fewel, when there is ſufficient dead wood, is waſt.

(o) If the tenant ſuffer the houſes to be waſted, and then ſell timber to repair the ſame, this is a double waſt. (p) Digging for gravel, lime, clay, brick earth, ſtone, or the like, or for mines of mettal, coal, or the like, hidden in the earth, and were not open when the Tenant came in, is waſt; but the Tenant may dig for gravel or clay for the reparation of the houſe, as well as he may take convenient timber trees.

(q) It is waſt to ſuffer a wall of the ſea to be in decay, ſo as by the flowing and reflowing of the ſea, the meadow or marſh is ſurrounded, whereby the ſame becomes unprofitable: but if it be ſurrounded ſuddenly by the rage and violence of the ſea, occaſioned by wind, tempeſt, or the like, without any default in the tenant, (r) this is no waſte puniſhable. So it is if the Tenant repair not the banks or walls againſt rivers, or other waters, whereby the meadows or marſhes be ſurrounded, and become ruſhy and unprofitable.

(ſ) If the Tenant convert arable land into wood, or è converſo, or meadow into arable, it is waſt, for it changeth not only the courſe of his husbandry, but the proof of his evidence.

(t) The tenant may take ſufficient wood to repair the walls, pales, fences, hedges and ditches, as he found them, but he can make no new: and he may take alſo ſufficient plowbote, firebote, and other housbote.

The tenant cutteth down trees for reparations and ſelleth them, and after buyeth them again and imployeth them about neceſſary reparations, yet it is waſt by the vendition: he cannot ſell trees, and with the money cover the houſe: Burning of the houſe by negligence or miſchance is waſte.

(u) If a man make a leaſe for life and by Deed grant that if any waſt or deſtruction be done, that it ſhall be redreſſed by neighbours, and not by ſuit or plea, notwithſtanding an action of waſt ſhall lie, for the place waſted cannot be recovered without a plea.

(x) Bracton, Fleta, and Britton, do uſe the ſame diviſion as is aforeſaid, viz. Vaſtum, deſtructio, & exilium, in their proper ſignification.

Now ſomewhat is to be ſpoken of Exile or deſtruction of men; Exile or deſtruction of villaines or Tenants at will, or making them poor, where they were rich when the tenant came in, whereby they depart from their tenures is waſte. (a) And yet the ſtatute of Glouc' ſpeaketh not of exile, but it is comprehended under the general word of Waſt. The ſtatute of W. 1. hath deſtructionem, the ſtatute of Magna Charta hath Vaſtum & deſtructionem, the ſtatute of Merlebridge hath vaſtum, venditionem & exilium in domibus, boſcis, & hominibus, &c.

But waſt and deſtruction in their larger ſenſe are words convertible. (b) Item de hoc quod dicit vaſtum & exilium, ſciendum eſt quòd non ſunt referenda ad eundum intellectum, ſed vaſtum & deſtructio fere idem ſunt, vaſtum idem eſt quod deſtructio, & è converſo, & ſe habent ad omnem deſtructionem generaliter.

(c) Vaſtum autem & deſtructio fere æquipollent & convertibiliter ſe habent in domibus, boſcis, & gardinis ſed exilium dici poterit, cum ſervi manumittantur & à tenementis ſuis injurioſe ejiciantur, fortuna autem & ignis vel hujuſmodi eventus inopinati omnes tenentes excuſant.

(d) No perſon ſhall have an action of waſte, unleſs he hath an immediate eſtate of inheritance, but ſometime another ſhall joyn with him for conformity. As if a reverſion be granted to two, and to the heirs of one; they two ſhall joyn in an action of Waſt: and in like ſort the ſurviving Coparcener, and the tenant by the curteſie ſhall joyn in an action of waſte: and if two joyntenants be, and to the heirs of one of them, and they make a Leaſe for life, they ſhall joyn in an action of Waſte. (e) If the eſtate taile determine, hanging the action of waſte, and the plaintiff become tenant in taile after poſſibility, the action of waſte is gone. (f) If the Tenant doth waſte and he in the reverſion dieth, the heir ſhall not have an action of waſte for the waſte done in the life of the Anceſtor; nor a Biſhop, maſter of an Hoſpital, Parſon or the like in the time of the Predeceſſor. (g) And ſo if Leſſee for years doth waſte and dieth, an action of waſte lieth not againſt the Executor or Adminiſtrator, for waſte done before their time. But if two Coparceners be of a reverſion, and waſte is committed, and the one of them die, the Aunt and the Niece ſhall joyn in an action of waſte.

(h) If lands be given to two and the heires of one of them, he that hath the Fee ſhall not have an action of waſte upon the ſtatute of Glouc. for that they are joyntenants, but his heir ſhall have an action of waſte againſt tenant for life.

Note after waſte done there is a ſpecial regard to be had to the continuance of the reverſion in the ſame ſtate that it was at the time of the waſte done, for if after the waſte he granteth it over, though he taketh back the whole eſtate again, yet is the waſte diſpuniſhable. So if he grant the reverſion to the uſe of himſelf and his wife, and of his heirs, yet the waſte is diſpuniſhable, and ſo the like, becauſe the eſtate of the reverſion continueth not, but is altered, and conſequently the action of waſte, for waſte done before (which conſiſt in privity) is gone.

(i) A Prohibition of waſte did lie againſt Tenant by the curteſie, Tenant in Dower, and Gardian in Chivalrie by the common Law, but not againſt tenant for life or years, becauſe they

(o) 44.E.3.44. 20.E.3. Waſt.32. F.N.B.59.b. 19.E.3.Waſt.30.
(p) 22.H.6.18.b. 9.E.4.35 41 E.3.Waſt.82. 17.E.3. 7.9.H.6.66.2.H.7.24. F.N.B.59.n.& 149.c. 20.E.3 Waſt.32.
(q) Anno 6.El. Of the Report of Juſtice Daliſ. in Griffins caſe. 17.E.3. 65. Brit.fol.168.b.
(r) 20.H.6.1. F.N.B.59 n. 6.El.ubi ſupra.
(ſ) 28.H.8.Dyer 37. 22.H.6.24. 10.H.7.5.a. 44.E.3.44.
(t) 16.El.Dy.332. 21.H.6.47. L.5.E.4.100. 12.E.3. Waſt.28.48.E.3.25. Temps E.1.123. 20.E.3.Waſt.32. 19.E.3.Waſt.30.
(u) 3.E.3.Waſt.5. Bracton lib.4.fol.315.
(x) Bracton fol.168. Fleta lib.1.cap.11. 16.H.5.Waſt.135. 3.E.2.tit.Waſt.2. 17.E.2.Waſt.118. 10.H.7.2.H.6.11. 9.H.6.52. 11.E.2. waſt.113. F.N.B.56.H. & 55.c. Regiſt. Judic.25.
(a) Glouc.cap.5. W.1.cap.21. Magna charta cap.4. Merleb.cap.23.
(b) Bract.lib.4.fol.316. & 317.
(c) Fleta lib.1.cap.11.
(d) 7.E.3.54.b.2.H.5.7. 22.H.6.24. 13.H.7. 27.H.8.13.F.N.B.59.f. 8.R.2.Waſt.147.
(e) 2.H.4.22.
(f) 2.H.4.2.
(g) 10.E.4.1.49.E.3.25. 23.H.8.tit.Waſt.Br. 38.E.3.17. 44.E.3.8. 45.E.3.3. 40.E.3.31. 11.E.2.Waſt.115. 2.Mar.Waſt.116. 8.E.2.Waſt.110.
(h) 21.E.3.17. 50.E.3.3. 8.H.6.13.
(i) Bract.lib.4.f.315.316 317. Fleta lib.1.cap.11. Brit.fol.168. Doct.& Stud.lib.2.ca.1. 12.H.4.3. 10.H.2. Waſt.142. 20.H.6.1. 4.H.2.Waſt.140. 9.H.3.ibid.136.

they came in by their own act, and he might have provided that no waste should be done. (i) A tenant by the curtesie or in dower can hold of none but of the heir, and his heirs by descent, and therefore if they grant over their whole estate, and the grantee doth waste, yet the heir shall have an Action of waste against them, and recover the land against the assignee: but if the heire either before the assignment had granted, or after the assignment doth grant the reversion over, the stranger shall have an Action of waste against the assignee, because in both Cases the privity is destroyed: in all other cases the Action of waste shall be brought against him that did the waste (for it is in nature of a trespass) unless it be in the case of a Ward (k) for there if the Gardian doth waste and assigne over, the Action lieth against the assignee (l). A Gardian shall not be punished for waste done by a stranger, it is so penal unto him, for he shall lose the Wardship both of the body and of the land, though the waste be but the value of twenty shillings, and if that sufficeth not to satisfie for the waste, then he shall recover damages of the waste, over and above the loss of the Ward. But tenant by the curtesie, tenant in dower, tenant for life, years &c. shall answer for the waste done by a stranger, and shall take their remedy over. (m) But if there be two joyntenants of a Ward, and one of them do waste, both shall answer for it.

(n) If the gardian doth waste and the heir within age bring an action of waste, the gardian shall lose the wardship as is aforesaid, but if the heir bring an action of waste at his full age, then he shall recover treble damages, for then he cannot lose the wardship.

(o) An Infant & Baron & Fem shall be punished for waste done by a stranger, and so shall the wife that hath the state by survivour for waste done by the husband in his life time, if she agree to the Estate, though there hath been variety of opinions in our books.

(p) But if Fem tenant for life take husband, and the husband doth wast, and the wife dieth, no action of waste lieth against the husband in the tenuit, for he was seised but in jure uxoris, and his wife was tenant of the freehold, but if a Fem be possessed of a term for years, and take husband, and the husband doth wast, and the wife dieth, the husband shall be charged in an action of waste, for the law giveth the term to him.

(q) If tenant for life grant over his Estate upon condition, and the grantee doth wast, and the Grantor re-entreth for the condition broken, the action of waste shall be brought against the grantee, and the place wasted recovered.

(r) If a lease for life be made to a Villein, and waste is done, the Lord entreth, he shall not be punished for the waste done before, but for waste done after, he shall.

(s) An occupant shall not be punished for wast, and so as if an Estate be made to A. and his heirs during the life of B. A. dieth, the heir of A. shall be punished in an action of waste.

(t) If a lease be made to A. for life, the remainder to B. for life, the remainder to C. in fee, in this case where it is said in the Register, and in F. N. B. that an action of waste doth lie, it is to be understood after the death or surrender of B. in the mean remainder, for during his life, no action of waste doth lie.

But if a lease for life be made, the remainder for years, the remainder in fee, an action doth lie presently during the term in remainder, for the mean term for years is no impediment.

But if a man make a lease for life or years, and after granteth the reversion for years, the lessor shall have no action of waste during the years, for he himself hath granted away the reversion, in respect whereof he is to maintain his action. (*) Otherwise it is, if he had made a lease in reversion which had been but a future interest, for there an action of waste lieth during the term, and so is the book to be understood, and the term shall be saved in that case.

(u) No action of waste lieth against a gardian in socage, but an account or trespass, nor against tenant by statute staple, &c. or elegit.

(w) If tenant for life or years or their assigne make a grant over, and notwithstanding take the profits, an action of waste lieth against him, by him in the reversion or remainder by the statute, Nota.

(x) If waste be done sparsim here and there in woods, the whole woods shall be recovered, or so much wherein the waste sparsim is done. And so in houses so many roometh shall be recovered wherein there is waste done, but if the waste be done sparsim throughout, all shall be recovered. It hath been said that if the hall be wasted, the whole house shall be recovered, because the whole house is denominated of the hall: but latter authority is to the contrary.

(y) There is waste of a small value, as Bracton saith, Nisi vastum ita modicum sit propter quod non sit inquisitio facienda. Yet trees to the value of three shillings and four pence, hath been adjudged waste, and many things together may make waste to a value. But let us now return to our Author.

¶ *Briefe de waste.* See in the Register five several writs of waste; Two at the Common law for waste done by tenant in Dower, or the Gardian, and three by special or statute Law, for waste done by tenant for life, for years and tenant by the curtesie.

(i) F.N.B. 56.E. & F. Temps E. 1. Wast. 122. 18.E.3.3.30.E.3.16. 38.E.3.23.11.H.4.18.4.E 3.25. Regist. 72. lib. 3. fol. 23. Walkers case lib. 9. fol. 142. Beaumonts case.

(k) 27.E.3.81.26.E.3. Waste 10.

(l) 12.H.4.3. Bract. lib. 4. 316.317. Fleta lib. 1. c. 11. Brit. 168.34.E.3. Wast. 146.44.E.3.27. F.N.B. 59.a. & 60.g. & T.

(m) 33.E.3. Wast. 6.

(n) 44.E.3.27.48.E.3.10. F.N.B. 60.t.12.H.4.3. 19.E.2. Wast. 117.41.E.3 Wast. 81.3.E.2. Wast. 3. 7.E.3.12.

(o) 15.H.3. Wast. 16. temps E.1. Wast. 128.2.H.4.3.2. 3.E.3.13.76. 11. Ass. 11. 21.H.6.24.b.33.H.6.31.a 42.E.3.22. 19.E.3. breve 246.46.E.3.25.7.H.6.2. d.3.E.3.46.10.E.3.17.18 9.E.3.42.9.E.3. breve 246.17.E.4.7.9.H.6.52. F.N.B. 36.b. Doct. & Stu. lib. 2. c. 1. 23. H.8. Wast. 138. lib. 8 fo. 44. Willingham's case.

(p) Lib. 5. fol. 75. Clifton's case. 49.E.3.25.46.E.3. Wast. Statham. 10.H.6. 11.12.

(q) 30.E.3.16.

(r) 48.E.3.19.

(s) Lib. 8. fol. 37. le Dean and Chapt. of Worcest. case lib. 10. fol. 9.b.

(t) 4.E.3.18. Cotes case. 3.E.3.18. F.N.B. 58.c. & 59.h. 50.E.3.3.33.E.3. Wast. 144.11.E.3. resceit 118. 10.E.4.9. Regist. 74. lib. 2. fol. 92. inter Paget & Carie in Binghās case. lib. 5. fol. 76. Pagets case. lib. 10. f. 44. Jennings case F.N.B. 59.h. 4.E.3.18.

(*) 4.E.3.18. F. tit. Wast. 18.

(u) Marlebridge cap. 17. 21.E.3.30.16.E.3. tit. Wast. 100.14.E.3. Wast. 107.2.E.2. Wast. 1.28.H. 6. Wast. 9.32.H.6.7. F.N.B. 59.E.

(w) 11.H.6. cap. 5. Lib. 5. f. 76. Boothes case.

(x) 8.E.2. wast. 112. 4.E.6 wast. 136. 4.E.3.32.15.H. 7.11.15.E.3. wast. 134. Temps E.1. wast. 134. 18 H.8.1.

(y) Bracton. lib. 4. fol. 316 38.E.3.7.b.34 E.3. wast. 146.14.H.4.11.b. F.N.B. 60.c. Temps E.1. wast. 124.19.H.6.8.

(z) Vi. Bract. li. 4. f. 413. b. Fleta lib. 2. cap. 12. See the second part of the Institutes. W. 2. cap. 24.

¶ *Briefe Dirra.* The Writs original of the Register (z) (as Bracton saith) formed, and of course had their first authority by Act of Parliament, and therefore without an act of Parliament they cannot be altered or changed, which is proved by the statute of W. 2. cap. 24. whereby remedy is provided in many cases. But hear what Bracton saith. Sunt quædam brevia formata in suis casibus, & quædam de cursu, quæ concilio totius regni sunt approbata. quæ quidem mutari non possunt, absque eorundem contraria voluntate. Magistralia autem sæpe variantur secundum varietatem casuum, &c. And this is the reason that in this case of halfe a year the words of the Writ shall be without change, Quod tenet ad terminum annorum, and the plaintiff must make a special declaration according to his case, for otherwise he should be without remedy. In this particular case the statute of Glouc. cap. 5. which giveth the Action of Waste against the lessee for life or years (which lay not against them at the Common law) speaketh of one that holdeth for term of years in the plural number, and yet here it appeareth by the authority of Littleton, That although it be a penal Law, whereby treble damages and the place wasted shall be recovered, yet a tenant for halfe a year being within the same mischief, shall be within the same remedy, though it be out of the letter of the law, for Qui hæret in litera, hæret in cortice, which is an excellent example, whereupon in many like cases a man may settle a certain judgment. You may observe in the said ancient authors, what remedy was given for waste at the Common law, and against whom, and what was adjudged waste, destruction, and exile.

De vasto. Bract. li. 4. f. 315. 316. 317 Fleta l. 1. c. 11. & l. 5. c. 33 Britton fol. 162. & 168. 46. E. 3. 31. F. N. B. 60. c. 4. E. 4. 13. 37. H. 6. 26. b. 7. H. 7. 2. 14. H. 8. 12. 18. E. 3. 27.

Vide Marlebridge ca. 23. 2. part of the Institutes.

In many cases a tenant for life or years may fell down timber to make reparations, albeit he be not compellable thereunto, and shall not be punished for the same in any action of waste. As (a) if a house be ruinous at the time of the lease made, if the lessee suffer the house to fall down he is not punishable, for he is not bound by law to repair the house in that case. And yet if he cut down timber upon the ground so letten, and repair it, he may well sustifie it, and the reason is, for that the law doth favour the (supportation or maintenance of houses of habitation for mankind. And therefore if two or more joyntenants or tenants in common be of a house of habitation, and the one will not repair the house, the other shall have by the law a writ De reparatione facienda, and the writ saith, Ad sustentationem ejusdem domus teneantur. So it is if the lessor by his Covenant undertaketh to repair the houses, yet the lessee (if the lessor doth it not) may with the timber growing upon the ground repair it though he be not compellable thereunto. In the same manner, if a man make a lease of a house and land without impeachment of waste for the house, yet may the lessee with the timber upon the ground repair the house, though he may utterly waste it if he will, and so may he in many other cases.

(a) 11. H. 8. 1.

F. N. B. fo. 127.

A man hath land in which there is a Mine of Coals, or of the like, and maketh (b) a lease of the land (without mentioning any Mines) for life or for years, the lessee for such Mines as were open at the time of the lease made, may digg and take the profits thereof. (c) But he cannot digg for any new Mine, that was not open at the time of the lease made, for that should be adjudged waste. And if there be open Mines, and the Owner make a lease of the land with the Mines therein, this shall extend to the open Mines only, and not to any hidden Mine, but if there be no open Mine, and the lease is made of the land together with all Mines therein, there the lessee may digg for Mines, and injoy the benefits thereof, otherwise those words should be void. I have been the more spacious, concerning this learning of waste, for that it is most necessary to be known of all men.

(b) 17. E. 2. 7. 9. H. 6. 64. 22. H. 6. 18. 9. E. 4. 35. 12. E. 4. 8. F. N. B. 149. c. & 59. n.

(c) Lib. 5. fol. 12. Sanders case.

Now hath Littleton spoken of an estate for life, and an estate for years in several persons. Now let us see how they stand simul and semel in one person.

If a man letteth lands to another for life, the remaynder to him for 21. years, he hath both estates in him so distinctly, as he may grant away either of them; for a greater estate may uphold a lesser but not è converso, and therefore if a man make a lease to one for 21. years, the remainder to him for term of his life, the lease for years is drowned.

(d) If a man make a lease for life to one, the remainder to his executors for 21. years, the term for years shall vest in him, for even as Ancestor and Heire are correlativa, as to Inheritance: (as if an estate for life be made to A. the remainder to B. in tayle, the remainder to the right heirs of A. the fee vesteth in A. as it had been limited to him and his heirs) even so are the Testator and the Executors correlativa as to any Chattel. And therefore if a lease for life be made to the testator, the remainder to his Executors for years, the Chattle shall vest in the lessee himself, as well as if it had been limited to him and his executors.

(d) 19. E. 2. covenant 25. 19. E. 3. covenant 244. 32. E. 3. Quid juris cl. 5. 17. E. 3. 29. 46. E. 3. 31. 40. E. 3. 5. 11. H. 4. 34. 14. Eliz. Dyer 309. M. 49. & 41. Eliz. in Com. Banc. Rot. 2215. in tresp. inter Sparke & Sparke. Hill. 42. Eliz. Sir John Savages case in Curia Wardorum.

CHAP.

CHAP. 8. Sect. 68.

Of Tenant at will.

¶ TEnant a volunt eſt ou terres ou tenements ſont leſſes per un home a un auter, a aver & tener a luy a la volunt le Leſſor, & force de quel Leaſe le Leſſee eſt en poſſeſſion, en tiel cas le leſſee eſt appel tenant a volunt, pur ceoque il nad aſcun certaine ne ſure eſtate, car le Leſſor luy poit ouſter a quel temps que il luy pleſroit: uncore ſi le leſſee emblea le terre & le leſſor apres lembleer, & devant q̄ les blees ſont matures luy ouſta, uncore le leſſee avera les blees & ad tres entr, egreſs & regreſs a leier & de carier les blees, pur ceo q̄ il ne ſcavoit a quel temps le leſſor voloit estre ſur luy. Auter eſt eſt tenāt pur terme dans q̄ conuſt le fine de ſon terme emblea la terre, & le terme eſt fini devant que les blees ſont matures, en ceo cas le Leſſor, ou celuy en la reverſion

TEnant at will is, where lands or tenements are let by one man to another, to have and to hold to him at the will of the leſſor, by force of which leaſe, the leſſee is in poſſeſſion: In this caſe the leſſee is called Tenant at will, becauſe he hath no certain nor ſure eſtate, for the leſſor may put him out at what time it pleaſeth him. Yet if the leſſee ſoweth the land, and the leſſor after it is ſown, and before the corn is ripe put him out, yet the leſſee ſhall have the corn, and ſhall have free entry, egreſs and regreſs to cut and carry away the Corn, becauſe he knew not at what time the leſſor would enter upon him. Otherwiſe it is if Tenant for years, which knoweth the end of his term, doth ſow the land, and his term endeth before the corn is ripe; In this caſe the leſſor, or he in

¶ *Tenant a volunt eſt, ou terres ou tenements, ſon leſſes per un home a un auter, a aver & tener a luy a la volunt le leſſor, &c.* It is regularly true that every leaſe at will muſt in law be at the will of both parties, and therefore when the leaſe is made, To have and to hold at the will of the leſſor, the law implyeth it to be at the will of the leſſee alſo; for it cannot be only at the will of the leſſor, but it muſt be at the will of the leſſee alſo. And ſo it is when the leaſe is made, To have and to hold at the will of the leſſee, this muſt be alſo at the will of the leſſor; and ſo are all the books, that ſeem prima facie to differ, clearly reconciled. Fleta lib.3.cap.15. 18.H.6.1.38.H.6.21. 9.E.4.1.b.10.E.4.18.b. 21.H.7.38.13.H.8.16. 14.H.8.11.14.

¶ *Per ceo que il nad aſcun certaine ou ſure eſtate, &c.* Alia poſſeſſio eſt precaria & alia pro precæ conceſſa, ut ſi quis ſine ſcripto conceſſerit alicui habitationem vel uſumfructum in re ſua tenenda ad voluntatem ſuam, hæc quidem poſſeſſio precaria eſt nuda, eo quod tempeſtive & intempeſtive pro voluntate Domini poterit revocari. Fleta lib.3.cap.15.

¶ *Uncore ſi le leſſee emblea la terre, & le leſſor apres le emblear, &c.* The reaſon of this is, for that the Eſtate of the leſſee is uncertain, and therefore left the ground ſhould be unmanured, which ſhould be hurtful to the common-wealth, he ſhall

shall reap the crop which he sowed in Peace, albeit the lessor doth determine his will before it be ripe. And so it is if he set Roots, or sow Hemp or Flax, or any other annual profit, if after the same be planted, the lessor ousts the lessee, or if the lessee dieth, yet he or his Executors shall have that years crop. But if he plant young fruit Trees, or young Oakes, Ashes, Elmes, &c. or sow the Ground with Acorns, &c. there the lessor may put him out notwithstanding, because they will yield no present annuall profit. And this is not only proper to a lessee at will, that when the lessor determines his will that the lessee shall have the corn sown, &c. but to every particular Tenant that hath an estate incertain, for that is the reason which Littleton expresseth in these words (pur ceo que il nad ascun certaine ou sure estate.) And therefore if Tenant for life soweth the ground, and he dieth, his Executors shall have the corn, for that his Estate was uncertain, and determined by the Act of God. And the same law is of the lessee for years of Tenant for life. So if a man be seised of land in the Right of his wife, and soweth the Ground, and he dieth, his Executors shall have the corn, and if his wife die before him he shall have the corn. But if husband and wife be joyntenants of the land, and the husband soweth the ground, and the land surviveth to the wife, it is said (a) that she shall have the corn. If tenant pur terme dauter vie soweth the ground, and Cesty que use dieth, the Lessee shall have the Corn. If a man seised of lands in fee and hath issue a daughter and dieth, his wife being enseint with a son, the daughter soweth the ground, the son is born, yet the daughter shall (b) have the corn, because her estate was lawful, and defeated by the act of God, and it is good for the common-wealth that the Ground be sown. (c) But if the lessee at will sow the Ground with corn, &c. and after he himself determine his will and refuseth to occupy the Ground, in that case the lessor shall have the corn, because he loseth his Rent. And if a woman that holdeth land Durante viduitate sua soweth the Ground and taketh husband (d) the lessor shall have the Emblements, because that the determination of her own estate grew by her own act. But where the estate of the lessee being incertain is defeasible by a right Paramount, or if the lease determine by the act of the lessee as by forfeiture, condition, &c. (e) There he that hath the right Paramount, or that entreth for any forfeiture, &c. shall have the corn.

If a Disseisor sow the Ground and sever the corn, and the Disseisee re-enter (f) he shall have the corn because he entreth by a former title, and severance or removing of the corn altereth not the case, for the regress is a recontinuation of the Freehold in him in Judgment of law from the beginning.

(g) If Tenant by statute Merchant soweth the Ground, and then a suddain and casual profit falleth by which he is satisfied, he shall have the Emblements.

¶ *Lessor luy puit ouster.* There is an express ouster, and implyed ouster, an express, as when the lessor commeth upon the land, and expressly forewarneth the lessee to occupy the Ground no longer; an implyed, as if the lessor without the consent of the lessee enter into the land and cut down a tree, this is a determination of the will, for that it should otherwise be a wrong in him, unless the trees were excepted, and then it is no determination of the will, for then the act is lawful albeit the will doth continue. If a man leaseth a Mannor at will whereunto a common is appendant, if the lessor put in his beasts to use the common, this is a determination of the will. The lessor may by actual entry into the Ground determine his will in the absence of the lessee, but by words spoken from the Ground the will is not determined until the lessee hath notice. No more than the discharge of a Factor, Attorney, or such like in their absence is sufficient in law untill they have notice thereof.

(a) If a woman make a lease at will reserving a Rent and she taketh husband, this is no countermand of the lease at will, but the husband and wife shall have an action of debt for the Rent, and so it is if a lease be made to a woman at will reserving a Rent, and the lessee taketh husband, this is no countermand of the lease, but the lessor may have an action of debt or distrein them for the Rent: so if the husband and wife make a lease at will of the wifes land reserving Rent and the husband die, yet the lease continueth: In like manner if a lease be made by two to two others at will, and the one of the lessors or of the lessees die, the lease at will is not determined in neither of those cases; which are necessary points to be known.

¶ *Apres lembleer, & devant que les blees sont meures.* Then put the case that the corn is ripe and ready to cut down, and the lessor before the lessee reapeth it, enter and put out the lessee, whether shall the lessee have the corn? and it is without all question that the lessee shall have it, for by the same reason that he shall have it when he is put out before it

avera les blees, pur ceo que le termor conust le certaintie de ſ terme quant ſ time ſerroit finy.

the reversio shall have the corn, because the lessee knew the certainty of his term and when it could end.

18.E.4.18.

Temps E.1.br.25.
10.Ass.pl.6.
10.E.3.29.
46.E.3.1.
7.H.4.17.
7.Ass.19.
Lib.5.106. Olands case.

(a) 8.Ass.21.
8.E.3.54.
Dyer 316.

(b) 16.H.6.6.

(c) Lib.5.fol.106. Olands case.

(d) Olands case ubi supra

(e) 33.E.3.cresp.F.254.
42.E.3.25.
Olands case. Ubi supra.

(f) 27.H.6.1.37.H.6.6.
12.E.4.45.14.E.4.6.
15.E.4.31. 2.H.7.1.
5.H.7.17.12H.7.25.
10.H.4.1.28.H.8.32.
Dyer.

(g) 44.E.3.15.
Fleta lib.2.cap.15.

(h) 35.H.6.24.21.H.6.9.
1.F.4.3.21.E.4.5.
Pl.com.parson de Honylands case.

14.E.4.6.
8.E.4.11.&c.

(a) Lib.5.fol.10. Hensteads case.
10.Eliz.Dyer 269.b.

it be ripe, he ſhall have it when he is put out when it is ripe, Et ubi eadem eſt ratio, ibi idem jus.

¶ *Et auxi franke entrie, egres & regres.* (b) For when the law doth give any thing to one, it giveth impliedly whatſoever is neceſſary, for the taking and enjoying of the ſame, Quando lex aliquid alicui concedit, concedere videtur & id ſine quo res ipſa eſſe non poteſt, and the law in this caſe giveth him not to an Action for the corn, but giveth him a ſpeedy remedy to enter into the land, and to take and carry it away, and compelleth not him to take it at one time, or to carry it before it be ready to be carried; and therefore the law giveth all that which is convenient, viz. free entry, egreſs and regreſs as much as is neceſſary.

(b) Temps E.1.tit.grāt 4 9.E.4.35.5.E.3.treſp.13. 21.H.7.14.b.8.H.6.18.b. 2.R.2.barre 237. 14.H.8.2.27.H.8.18.b.

If the leſſee be diſturbed of this way which the law doth give unto him, he ſhall have his Action upon his caſe, and recover his dammages, and this Action the law doth give unto him; for whenſoever the law giveth any thing, it giveth alſo a remedy for the ſame. But here is to be obſerved a diverſity between a private way, whereof Littleton here ſpeaketh, and a common way. For if the way be a common way, if any man be diſturbed to go that way, or if a ditch be made overthwart the way ſo as he cannot go, yet ſhall he not have an Action upon his caſe, and this the law provided for avoyding of multiplicity of ſuits, for if any one man might have an Action, all men might have the like. But the law for this common nuſance hath provided an apt remedy, and that is by Preſentment in the leet or in the Town, unleſs any man hath a particular dammage, as if he and his horſe fall into the ditch, whereby he received hurt and loſs, there for this ſpecial dammage which is not common to others, he ſhall have an Action upon his caſe, and all this (c) was reſolved by the court in the Kings bench: And in that caſe it was ſaid that it had been adjudged in that court between Weſtbury and Powell, that where the Inhabitants of Southwarke had by cuſtom a watering place for their cattel which was ſtopped up by Powel, that in that caſe any Inhabitant of Southwarke might have an Action, for otherwiſe they ſhould be without remedy becauſe ſuch a nuſans is not preſentable in the leet or Town: Note the diverſity.

(c) 27.H.8.27. 2.E.4.9. 5.E.4.2. Tr.41.Eliz. between Finienx and Hovenden. Vid.lib.5.fol.72. Williams caſe.

There be three kind of wayes, whereof you ſhall (d) read in our Ancient books. Firſt a foot way, which is called Iter, quod eſt jus eundi vel ambulandi hominis, and this was the firſt way.

(d) Fleta lib.4.ca.27. Bracton lib.4.fol.232.

The ſecond is a foot way and horſe way, which is called actus ab agendo; and this vulgarly is called pack and prime way, becauſe it is both a foot way, which was the firſt or prime way, and a pack or drift way alſo.

The third is via or aditus, which contain the other two, and alſo a cart way, &c. for this is jus eundi, vehendi, & vehiculum & jumentum ducendi; and this is twofold, viz. Regia via, the Kings high way for all men, & communis ſtrata, belonging to a city or Town, or between Neighbours and Neighbours. This is called in our books chimin, being a French word for a way, wherof cometh chiminage chiminarium, or chimmagium, which ſignifieth a Toll due by cuſtom; for having a way through a Foreſt; and in Ancient Records it is ſometime alſo called Pedagium.

31.E.3.barre 161. 27.E.3.78. 6.E.3.23.

Carta de foreſta cap.14.

If the leſſee at will by good husbandry and induſtry, either by overflowing or trenching, or compaſſing of the Meadows, or digging up of buſhes or ſuch like, make the graſs to grow in more abundance, yet if the leſſor put him out, the leſſee ſhall not have the graſs, becauſe that the graſs is the natural profit of the earth. And the ſame law is if he doth ſow hay-ſeed, and thereby encreaſeth the graſs.

¶ *Auterment eſt ſi tenant pur terme dans que conuſt le fine de ſon terme, &c.* Well ſaid Littleton (which knoweth the end of his term) that is, where the end of the term is certain, but where the leaſe for years depends upon an incertainty, as upon the death of Tenant for life being made by him, or of a husband ſeiſed in the Right of his wife, or the like, there it is otherwiſe.

Sect. 69.

¶ Item ſi un meſe ſoit leſſe a un home a tener a volunt, p force de quel le leſſee enter en le meſe, deins quel meſe

ALſo if a houſe be letten to one to hold at will, by force whereof the leſſee entreth into the houſe, & brings his houſhold-

¶ *Si un meſe ſoit leſſe a un home a tener a volunt, &c* The reaſon of this is evident upon that which hath been ſaid before.

¶ *Meſe*, or Maiſon,

son, called in legal latine Messuagium, containeth (as hath been said) the buildings, curtilage, Orchard, and Garden.

Cottage, Cotagium is a little house without land to it. (a) But 31. Eliz. cap. 1. and cottagers in Doomesday book are called Cotteneli: and in ancient Records Haga signifieth a house. If a man hath a house near to my house and he suffereth his house to be so ruinous, as it is like to fall upon my house, (b) I may have a writ de domo reparanda, and compel him to repair his house. But a Precipe lieth not de domo, but de messuagio.

(a) 31. El. ca. 1. in Doomesday.

(b) Reg. 153. F.N.B. 127. 4. E. 2. Vouch. 244. Six acres of Land may be parcel of a house.

¶ *Per reasonable temps.* (c) This reasonable time shall be adjudged by the discretion of the Justices, before whom the cause dependeth; and so it is of reasonable fines, customs, and services, upon the true state of the cause depending before them: for reasonableness in these cases belongeth to the knowledge of the law, and therefore to be decided by the Justices. (d) Quam longum esse debet non definitur in jure, sed pendet ex discretione Justiciariorum: And this being said of time, the like may be said of things uncertain, which ought to be reasonable; for nothing that is contrary to reason, is consonant to law.

(c) 22. E. 4. 17. 34. H. 6. 40.

(d) Bract. li. 2. ca. 32. b.

¶ (e) *Sicome home seisie dun mese en fee simple, on fee taile, &c.* This is so evident, as it needeth no explanation.

(e) 2. H. 6. 15. 21. H. 6. 30.

il porta ses utensils de meason, & puis le Lessor luy ousta, uncore il avera franke entre egresse & regresse en mesme le mese per reasonable temps, de carrier ses biens & utensils. Sicome home seisie dun mese en fee simple, fee taile, ou pur terme de vie, le quel ad certain biens deins ⁊ le mese, & fait ses executs, & dēy, quecunque apres sa mort ad ⁊ mese, uncor les executors aūont franke entry egresse & regres ⁊ carrier hors de mesme le mese les bīs lour testator per reasonable temps.

stuff into the same, and after the Lessor put him out, yet he shall have free entry, egress and regress into the said house, by reasonable time to take away his goods and Utensils. As if a man seised of a mese in fee simple, fee taile, or for life, hath certain goods within the said house, and makes his Executors, and dieth, whosoever after his decease hath the house, his Executors shall have free entry egress and regress to carry out of the same house the goods of their Testator by reasonable time.

Sect. 70.

¶ HEre it appeareth, That if the Feoffee doth enter, he is Tenant at will, because he entreth by the consent of the Feoffor.

¶ *Et deliver a luy le fait.* Albeit the Deed be delivered upon the ground, yet doth it not amount to a livery of seisin of the land; for it hath his natural effect to make it a Deed. (f) Donationum alia perfecta, alia incepta & non perfecta; Ut

(f) Flet. li. 3. c. 3. & c. 15. 43. E. 2. tit. feof. & faits 51 35. H. 8. Feoff. Br. 27. Ass. 61. 38. Ass. 2. 39. Ass. 12. 41. E. 3. 17. li. 6. fol. 26. Sharps case.

¶ ITem si un home fait un fait de Feoffment a un auter de certaine terre, & deliver a luy le fait, mes nemy livere de Seisin, en ceo case, celuy a que le fait est fait, poit enter en le Terre, & tener & occupier a la volunt celuy que fist

ALso if a man make a Deed of Feoffment to another, of certain lands, and delivereth to him the Deed, but not livery of seisin; in this case he to whom the Deed is made, may enter into the Land, and hold and occupy it at the will of him which

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le fait, pur ce que il est prove per les parols del fait, que il est la volunt que le auter avera la terre, mes celuy que fist le Fayt luy poet ouste quaunt luy pleist.

made the Deed, because it is proved by the words of the deed that it is his will that the other should have the land; but he which made the Deed may put him out when it pleaseth him.

si donatio lecta fuerit & concessa, ac traditio nondum fuerit subsecuta. But if the deed be delivered in name of seisin of the land, or if the Feoffor saith to the Feoffee, Take and enjoy this land, according to the Deed, or enter into this land, and God give you Joy: these words do amount to a livery of seisin.

Sect. 71.

¶ Item si un mese soit lessee a tener a volunt, le lessee nest pas tenus a susteiner ou repairer le Meason, sicome Tenant a terme dans est tenus. Mes si le Lessee a volunt fait voluntarie wast, sicome en abatement des mealons, ou en couper des arbres, il est dit que le Lessor avera de ceo enūs luy action de Trespasse. Sicome ieo bayle a un hōe mes barbits a cōpester s̄ t̄r, ou mes boefes a arer̄ la terr̄, & il occist mes avers, ieo puissoy bn aū un act̄ d trās enūs luy nient obstant t̄ bailement.

ALso if a house be leased to hold at will, the Lessee is not bound to sustain or repair the house, as Tenant for term of years is tyed. But if Tenant at will commit voluntary wast, as in pulling down of houses, or in selling of trees, it is said that the Lessor shall have an Action of Trespass for this, against the Lessee. As if I lend to one my Sheep, to take his land, or my Oxen to plow the land, and he killeth my Cattel, I may well have an action of Trespass against him, notwithstanding the lending.

¶ *Si un mese soit lesse a tener a volunt le lesse nest passe tenus, &c.* For the statute of Glouceſter above mentioned extends not to a tenant at will, and therefore for permissive wast, the lessor hath no remedy at all.

¶ *Mes si Lessee a volunt fait voluntary wast, &c.* (g) And true it is, that if Tenant at will cutteth down timber Trees, or voluntarily pull down and prostrate houses, the lessor shall have an Action of Trespass against him, quare vi & armis, for the taking upon him power to cut Timber, or prostrate houses, concerneth so much the freehold and inheritance as it doth amount in law to a determination of his will, (h) and so hath it been adjudged.

(g) 21.H.6.38.18.E.3.25 12.H.4.3.22.E.4.5o.

(h) Mich.28.& 29.Eliz. Rot.318.in Com.Banc. inter Walgrave & Somerset. V. le Counts de Shrewsburies case, li.5. fo.13.

(i) If Tenant at will granteth over his estate to another, and the Grantee entreth, he is a Disseisor, and the lessor may have an Action of Trespass against the grantee, for albeit the Grant was void, yet it amounteth to a determination of his will.

(i) 27.H.6.3.22.E.4.5.

¶ *Sicome ieo baile a un home mes barbits a compester son terre, &c.* And the reason is, (k) that when the Bayliee having but a bare use of them, taketh upon him as an Owner, to kill them, he loseth the benefit of the use of them. Or in these cases he may have an Action of Trespass sur le case, for this conversion, at his election.

(k) V.11.H.4.24.1.E.4.9. b. 12.E.4.8.21.E.4.19.& 76. 22.E.4.5. 3.H.7.4. 21.H.7.14. Flet.li.2.ca.1.

¶ *Trespasse.* Transgressio derivatur à transgrediendo, because it passeth that which is right: Transgressio autem est cum modus non servatur, nec mensura: debet enim quilibet in suo facto modum habere, & mensuram: Nota, In the lowest and the highest Offences there are no Accessaries, but all are Principals, as in Ryots, Routs, forcible Entries, and other transgres-

gons vi & armis, which are the lowest offences; and so in the highest offence which is crimen læsæ majestatis, there be no Accessaries: but in Felonies there be Accessaries both before and after.

Sect. 72.

21.H.7.39.b.2.E.4.6.b. 7.E.4.27.2. 6.R.2.Avowry 86.

IL poet diſtreyner pur le rent arere ou over de ceo un action de debt, &c. But if he impound the diſtreſs upon the ground letten at will, the will is determined. Note, he may diſtreyn for the Rent, and yet it is no Rent ſervice, for no fealty belongeth thereunto, but a Rent diſtreynable of common Right.

NOta ſi le leſſor ſur tiel leaſe a volunt reſerve a luy un annual Rent, il poit diſtreyner pur le Rent arere, ou aver de ceo un action a debt a ſon election.

NOte, if the leſſor upon a leaſe at will, reſerve to him a yearly Rent, he may diſtreyn for the Rent behind, or have for this an Action of Debt at his own Election.

(l) Bracton lib.4.fol.318. 4.E.3.39.7.E.3.23. 24.E.3.24.38.E.3.28. 7.R.2.ſavour deff.30. 8.E.4.25.4.H.6.30. 22.E.4.38.18.E.4.25. F.N.B.201.D.203. 8.E.2.entre 87. Temps H.8 b.15. tit.tenant a volunt. Pl.Com.138. 4.H.7.3.

There is a great diverſity between a Tenant at will, and a Tenant at ſufferance; for Tenant at will is always by Right, and Tenant at ſufferance entreth by a lawful leaſe, and holdeth over by wrong. A Tenant at ſufferance is he that at the firſt came in by lawful demiſe, and after his eſtate ended continueth the poſſeſsion and wrongfully holdeth over. (l) As Tenant pur terme dauter vie, continueth in poſſeſsion after the deceaſe of Ce' que vie, or Tenant for years holdeth over his term; the leſsor cannot have an Action of Treſpaſs before entry. Now that a writ of entry ad terminum qui præterijt, lyeth againſt ſuch a Tenant as holdeth over, is rather by admiſſion of the Demandant, than for any eſtate of freehold that is in him, for in Judgment of law he hath but a bare poſſeſsion, but againſt the King there is no Tenant at ſufferance, but he that holdeth over in the caſes abovesaid is an intruder upon the King, becauſe there is no laches imputed to the King for not entring (m) If Tenant in taile of a Rent grant the ſame in fee and dieth, yet the iſſue in taile may bring a Formedon, and admit himſelf out of poſſeſsion. The like law is it if a man maketh a leaſe at will and dieth, now is the will determined, and if the leſſee continueth in poſſeſsion he is Tenant at ſufferance, and yet the heir by admiſsion may have an aſsiſe of Mordanc' againſt him. (n) But there is a diverſity between particular eſtates made by the terretenant, as above is ſaid, and particular eſtates created by Act in law: as if Gardian after the full age of the heir, continueth in poſſeſsion, he is no Tenant at ſufferance, but an Abator, againſt whom an Aſſize of Mordanceſter doth lie. Et ſic de ſimilibus.

(m) 13.H.7.10 2. 21.H.6.54.5.E.4.3. 22.R.2.tits Diſcont. 48.E.3.23.pl.com.435. 19.E.3.bre.468. 15.E.4.Diſcont.30. 6.E.3.56.57.21.E.4.5. 21.H.7.28.10.E.4.18. Per Cook & Litt.

(n) Statute & Merlbridge cap.26. Abb.Aſſ,120.b. F.N.B.196. 11.E.4. 10.& 11. Bract.lib.4 fo.252.253.

Chap. 9. Sect. 73.

Tenant by Copy.

TEnant per Copie, &c. Tenens per copiam rot.Cur'. Copie we call in Latine copiam, though copia in his proper ſignification ſignifieth plenty, but we have made a Latine word of the French word Copie, and this is ancient, for in the Regiſter fol. 51. there is a writ de copia libelli deliberanda, which is grounded upon the ſtatute of 2. H. 4. ca. There is no Tenant in the Law, that holdeth

TEnant per copie de court roſt eſt, deins quel Manor il y ad un cuſtome que ad eſte uſe de temps dont memorie ne court, que certaine tenants deins meſm le Manor, ont uſe daver tetres & tenements, a tener a

TEnant by copy of Court Roll is, as if a man be ſeiſed of a Mannor, within which mannor there is a cuſtome, which hath been uſed time out of minde of man, that certain Tenants within the ſame manor have uſed to have lands and te-

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eux & la lour heires en fee ſimple, ou en fee taile, ou a terme de vie, &c. a volunt le Seigniour ſolonque le cuſtome de meime le Mannor.

nements to hold to them and their heirs in fee ſimple, or fee taile, or for term of life, &c. at the will of the Lord according to the cuſtome of the ſame Mannor.

by copy but only this kind of cuſtomary Tenant, for no man holdeth by copy of a charter, or by copy of a fine, or ſuch like, but this. Tenant holdeth by copy of court roll.

(a) Bracton calleth copiholders Villanos Sockmannos, not becauſe they were bond, but becauſe they held by baſe tenure by doing of Villein ſervices. (a) Bracton lib.2.cap.8. fol.26.& lib.4.fol.209. Britton 165. Fleta lib.1.cap.8.& lib.2. cap.6. Item de cuſtumariis. Ockam Cap. quid murdrum,F.N.B.f.12.c.

And Britton ſaith that ſome that be free of blood do hold land in Villenage, and Littleton himſelf in the next chapter calleth them Tenants by baſe tenure: and in F. N. B. fol. 12. C. Et ceſt term que eſt ore a ceſt jour appel copitenaunts ou copiholders, ou tenaunts per copie, eſt forſque un novel noſme trove, car dancient temps ils fuer' appelles tenant' in Villenage, ou de baſe tenure, &c.

(b) And yet in 1. H. 5. 11. they are called copiholders, in 14. H. 4. 34. tenant per le verge. in 42. E. 3. 25. Tenant per Roll ſolonque le volunt le ſeignior; and in the ſtatute of 4. E. 1. called extenta manerii, they are called Cuſtomarii tenentes, and ſo doth Fleta call them; And before him Ockam (who wrote in the Reign of H. 2.) ſpake of them, and how, and upon what occaſion they had their beginning. (b) 1.H.5.11.14.H.4.34. 42.E.3.25. Vid.lib.4.fol.2.Browns caſe.

(c) Terra ex ſcripto Saxonice Bockland, fundum veteres aut ex ſcripto qui Bockland, i. e. Bookland, aut ſine ſcripto qui Folkland dicebatur, poſſidebant, quæ fuit ex ſcripto poſſeſſio commodiore erat poſſeſſione libera, atque immunis, fundus ſine ſcripto cenſum penſitabant annuum, atque officiorum ſervitute quadam eſt obligatus, priorem viri plerunque nobiles, atque ingenui, poſteriorem ruſtici fere & pagani poſſidebant. (c) Lamb. Verb. terra ex ſcripto.

¶ *Court.* Curia, court is a place where Juſtice is judicially miniſtred, and is derived à cura, quia in curiis publicis curas gerebant. (d) The court baron muſt be holden on ſome part of that which is within the Mannor, for if it be holden out of the Mannor it is voyd, unleſs a Lord being ſeiſed of two or three Mannors hath uſually time out of mind kept at one of his Mannors courts for all the ſaid Mannors, then by cuſtom ſuch courts are ſufficient in law, albeit they be not holden within the ſeveral mannors. And it is to be underſtood that this court is of two Natures; the firſt is by the common law, and is called a court baron, as ſome have ſaid for that it is the Freeholders or Freemens court, (for Barons in one ſenſe ſignifie Freemen) and of that court the Freeholders being ſuitors be Judges, and this may be kept from three weeks to three weeks. The ſecond is a cuſtomary court, and that doth concern copiholders, and therein the Lord or his Steward is the Judge. Now as there can be no court baron without Freeholders, ſo there cannot be this kind of cuſtomary court without copiholders or cuſtomary holders. And as there may be a court baron of Freeholders only without copiholders, and then is the Steward the Regiſter, ſo there may be a cuſtomary court of copiholders only without Freeholders, and then is the Lord or his Steward the Judge. And when the court baron is of this double nature, the court Roll containeth aſwel matters appertaining to the cuſtomary court, as to the court baron. (d) Vid.4.fol.24.inter Murrell & Smith eodem lib.fol.27. inter Clifton & Molineux. Lib.4.f.26.Melwitches caſe.Britton fol.274.

And for as much as the title, or eſtate of the copiholder is entred into the Roll whereof the ſteward delivereth him a copy, thereof he is called copiholder. (e) It is called a court baron, becauſe amongſt the laws of King Edward the confeſſor it is ſaid: Barones vero qui ſuam habent curiam de ſuis hominibus, &c. taking his name of the Baron who was Lord of the Mannor, or for that properly in the eye of law it hath relation to the Freeholders, (f) who are Judges of the court. And in ancient charters and Records the Barons of London, and Barons of the cinque Ports do ſignifie the Freemen of London, and of the cinque Ports. (e) Lamb.fol.128.& 136. Cambden.Brit.fo.121.b. Britton fol.274. (f) Mirror cap.1.Sect.37

¶ *Seiſie dun Mannor.* Manerium dicitur à manendo ſecundum excellentiam ſedes magna fixa & ſtabilis. Lageman, i. e. habens ſocam & ſacam ſuper homines ſuos, &c. (g) Et ſciendum eſt quod manerium poterit eſſe per ſe ex pluribus edificiis coadjuvatum ſive villis & hamlettis adjacentibus. Poterit etiam eſſe manerium & perſe & cum pluribus villis, & cum pluribus Hamlettis adjacentibus, quorum nullum dici poterit manerium per ſe ſed villæ ſuæ Hamlettæ, poterit etiam eſſe per ſe Manerium capitale, & plura continere ſub ſe Maneria non capitalia, & plures villas & plures Hamlettas quaſi ſub uno capite aut dominio uno. And afterwards, Manerium autem fieri poterit ex pluribus villis vel una, plures enim villæ poterunt eſſe in corpore Manerii ſicut & una. And in theſe (h) Ancient Authors you ſhall ſee the difference, inter manſionem, villam, & Manerium. Concerning the Inſtitution of this court by the laws and Ordinances of Ancient Kings and eſpecially of King Alfred, it appeareth Domeſday. (g) Bracton lib.4.fo.212. Fleta lib.4.c.15.& lib.6. cap.49.Britton fol.124. (h) Bract.lib.5.fo.434. Fleta ubi ſupra. Mirror.cap.1.ſect.3.

that the firſt Kings of this Realm had all the lands of England in Demean, and les grand Manors & Royalties they reſerved to themſelves, and of the remnant they, for the defence of the Realm, enfeoffed the Barons of the Realm with ſuch Juriſdiction as the court baron now hath, and inſtituted the Freeholders to be Judges of the court baron. And herewith agreed the aforeſaid law of Saint Edward. And it is to be obſerved, that in thoſe Ancient laws under the name of Barons were compriſed all the Nobility.

There may be a cuſtomary Mannor granted by copy of court roll, ſo although the word be (ſeiſie) which properly betokeneth a Freehold, yet Tenant for years, Tenant by ſtatute Merchant, Staple, Elegit, and Tenant at will, Gardian in chivalry, &c. who are not properly ſeiſed but poſſeſſed, are Domini pro tempore, not only to make admittance, but to grant voluntary copies of Ancient copihold lands which come into their hands. And therefore there is a diverſity between Diſſeiſors, Abators, Intruders, and others that have defeaſible Titles, for their voluntary Grants of Ancient copihold lands, ſhall not bind the Diſſeiſees or others that right have. And voluntary Grants by copy, made by ſuch particular Tenants as is aforeſaid, ſhall bind him that hath the Freehold and Inheritance, becauſe all theſe be lawful Lords for the time being, but ſo is not a Tenant at ſufferance, becauſe he is in by wrong as hath been ſaid, and ſo (i) was it adjudged P. 29. Eliz. inter Rowle & Arteis lib. 4. fol. 24. But admittances made by Diſſeiſors, Abators, Intruders, Tenant at ſufferance or others that have defeaſible Titles, ſtand good againſt them that right have becauſe it was a lawful Act, and they were compellable ſo do them.

(i) Lib. 4. fo. 24. p. 29. Eliz. inter Rous & Arteis.

(k) And yet in ſome ſpecial caſe an Eſtate may be granted by copy, by one that is not Dominus pro tempore, nor that hath any thing in the Mannor. As if the Lord of a Mannor by his will in writing, deviſeth that his Executor ſhall grant the cuſtomary Tenements of the Mannor according to the cuſtom of the Mannor for the payment of his Debts, and dieth, the Executor having nothing in the Mannor, may make Grants according to the cuſtome of the Mannor.

(k) Dyer Mich. 7. & 8. Eliz. Manuſcript.

¶ *Deins quel mannor il y ad un Cuſtome que ad eſte uſe de temps dont memory ne court, &c.* Of this cuſtom here ſpoken of there be three ſupporters. The firſt is time, and that muſt be out of memory of man, which is included within this word (cuſtom) ſo as copihold cannot begin at this day. (l) The ſecond ſupporter is that the Tenements be parcel of the Mannor or within the Mannor, which appear by theſe words of Littleton, que certeine Tenants deins meſme le Mannor, &c. The third ſupporter is that it hath been demiſed and demiſible by copy of court Roll, for it need not to be demiſed time out of mind by copy of court; but if it be demiſible it is ſufficient. For example: If a copihold tenement eſcheat to the Lord, and the Lord keepeth it in his hands by many years, during this time it is not demiſed but demiſible, for the Lord hath power to demiſe it again.

(l) Vide lib. 4. fol. 24. inter Murrel & Smith.

¶ *A volunt le ſeigniour ſolonque le cuſtome.* So as he is not a bare Tenant at will, but a Tenant at will according to the cuſtom of the Mannor, as ſhall be ſpoken more hereafter in this chapter.

¶ *Certaine tenements.* What things may be granted by copy, is neceſſary to be known: Firſt, a Mannor may be granted by copy. Secondly, underwoods without the ſoil may be granted by copy to one and to his heirs, and ſo may the herbage or veſture of land. Thirdly, generally all lands and tenements within the Mannor and whatſoever concerneth lands or Tenements may be granted by copy: As a fair appendant to a Mannor may be granted by copy, &c.

Lib. 11. 17. Sir H Nevils Caſe. Lib. 4. fo. 30. 31. inter Hoc & Tayler.

¶ *Conſuetudines.* This word Conſuetudo being derived à conſueto, properly ſignifieth a cuſtom, as here Littleton taketh it: But in legal underſtanding it ſignifieth alſo Tolles, Murage, Pontage, Paviage, and ſuch like newly granted by the King; and therefore when the King grants ſuch things, the words be, Conceſſimus, &c. in auxilium villæ prædict' pavand', &c. conſuetudines ſubſcriptas, viz. de quolibet ſumagio, &c.

Regiſt. F. N. B. 270. d. v. Mag. Carta in cap. Itin. fol. 151. Brack. lib. 3. 117. Fleta lib. 1. cap. 20.

And it was an Article of the Juſtices in Eire to inquire, De novis conſuetudinibus levatis in regno, ſive in terra, ſive in aqua, & quis eas levavit & ubi. Where conſuetudo is taken for Tolles and ſuch like Taxes or charges upon the Subject.

Sect. 74.

¶ *Et tiel tenant ne puit aliener ſa terre, &c.* And this is

¶ Et tiel Tenant ne puit alien ſa terre per fait, car

And ſuch a tenant may not alien his land by deed, for then

donques le Seignior poit entre come en chose forfeit a luy, mes sil voit alien sa terre a un auter, il covient solonque ascun custome de surrender les tenemẽts en ascun Court, &c. en le maine le Seignior, al use celuy que avera le state, en tiel form̃, ou tiel effect.

Ad hanc Curiam venit *A.* de *B.* & sursum reddidit in eadẽ Curiam, unum mesuagium, &c. in manus Domini, ad usum *C.* de *D.* & hæredum suorum, vel hæredum de corpore suo exeuntiũ, vel pro termino vitæ suæ, &c. Et super hoc venit prædictus *C.* de *D.* & cœpit de Domino in eadem Curia, mesuagium prædictũ, &c. Habendum & tenendum sibi & hæredibus suis, vel sibi & hæredibus de corpore suo exeuntibus, vel sibi ad terminum vitæ, &c. ad voluntatẽ domini, secundum consuetudinem manerii, faciendo & reddendo inde redditus, servitia, & consuetudines inde, prius debita & consueta, &c. Et dat Domino pro fine, &c. Et fecit domino fidelitatem, &c.

the Lord may enter as into a thing forfeited unto him. But if he will alien his land to another, it behoveth him after the custom to surrender the tenements in Court, &c. into the hands of the Lord to the use of him that shall have the Estate, in this form or to this effect.

A. of *B.* cometh unto this Court, & surrendreth in the same Court a Mease, &c. into the hands of the Lord, to the use of *C.* of *D.* and his heirs, or the heirs issuing of his body, or for term of life, &c. And upon that, cometh the aforesaid *C.* of *D.* and taketh of the Lord in the same Court, the foresaid mease, &c. To have and to hold to him and to his heirs, or to him and to his heires issuing of his body, or to him for term of life, at the Lords will, after the custom of the manor, to do and yield therefore the Rents, Services, and Customs thereof before due & accustomed, &c. and giveth the Lord for a fine, &c. and maketh unto the Lord his fealtie, &c.

true in case of alienation, but when a man hath but a right to a Copihold, he may release it by deed or by Copie, to one that is admitted Tenant de facto. Lib. intrat. 131. Lib. 4. fol. 25. b. inter Kits & Queinton.

¶ *Alien per fait.* Here it appeareth by Littleton that there must be an alienation: for the making of the Deed alone, unless somewhat pass thereby is no forfeiture: as if he make a charter of feffment, or a deed of demise for life, and make no livery, this is no forfeiture, because nothing passeth, and therefore no alienation, but otherwise it is of a lease for years.

¶ *Forfeit a luy.* This Adjective in Latin is forisfactus, the Verb is forisfacere, and the Noun forisfactura, they are all derived of foris (that is) extra, and facere, quasi diceret, extra legem seu consuetudinem facere, to do a thing against or without Law or Custom, and that legally is called a forfeiture Littleton useth this word but once in all his book. What shall be said (k) forfeitures of Copiholds you may read at large in my Reports. (k) Lib. 4. inter les Copihold cases 21. 23. 25. 27. 28. Lib. 8. 92. 99. 100. Lib. 9. 75. 107. Lib. 10. 131.

¶ *En ascun Court.* (l) This is the general custom of the Realm, that every Copiholder may surrender in Court and need not to alledge any custom therefore. So if out of court he surrender to the Lord himself, he need not alledge in pleading any custom, but if he surrender out of court into the hands of the Lord by the hands of two or three, &c. copiholders, or by the hands of the Bayliff or Reeve, &c. or out of court by the hand of any other, these customs are particular, and therefore he must plead them. (l) Bract. lib. 2. cap. 8. & lib. 4. 49. 15. H. 4. 34. 1. H. 5. 11.

(m) Bracton lib. 4. fol. 209. speaking of these kind of customary Tenants, saith, Dare autem non possunt tenementa sua, nec ex causa donationis ad alios transferre non magis quam villani puri, & unde si transferre debeant, restituunt (m) Bract. lib. 4. fo. 309. & lib. 2. cap. 8. ac. 14. H. 4. 34.

ea Domino vel Balivo, & ipſi ea tradunt aliis in villenagium tenenda, but although it be incident to the eſtate of a Copihold, to paſs as our Author ſaith by ſurrender, (b) yet ſo forcible is cuſtom, that by it a Freehold and Inheritance, may alſo paſs by ſurrender (without the leave of the Lord) in his Court, and delivered over by the Baily to the feffee, according to the form of the Deed, to be inrolled in the court or the like.

(b) Coram Rege Mich. 31.E.3. Ranulph Huntingfelds caſe. 3.E.3 Corona 310. 11.H.4.83. per Thorning

¶ *Ad hanc curiam venit* A *de* B *& ſurſum reddidit, &c* Here Littleton putteth an example of a ſurrender in Court, and in this example three (c) things are to be obſerved.

(c) Vide lib.4. inter les caſes de Copiholds.

Firſt, That the ſurrender to the Lord be general without expreſſing of any Eſtate, for that he is but an inſtrument to admit Ceſty a que uſe, for no more paſſeth to the Lord, but to ſerve the limitation of the uſe, and Ce' que uſe, when he is admitted, ſhall be in by him that made the ſurrender, and not by the Lord.

Secondly, if the limitation of the uſe be general, then Ce' que uſe, taketh but an eſtate for life, and therefore here Littleton expreſſeth upon the declaration of the uſe, the limitation of the Eſtate, viz. in fee ſimple, fee taile, &c.

Thirdly, The Lord cannot grant a larger eſtate than is expreſſed in the limitation of the uſe. Littleton here putteth his caſe of one. If two joyntenants be of copihold lands in fee, and the one out of court according to the cuſtom ſurrender his part to the Lords hands, to the uſe of his laſt Will, and by his will deviſeth his part to a ſtranger in fee, and dieth, and at the next court the ſurrender is preſented, by the ſurrender and preſentment the joynture was ſevered, and the deviſee ought to be admitted to the moitie of the land, for now by relation, the ſtate of the land was bound by the ſurrender.

(d) Mich.2.& 3.Ph.& M. in Com. Banco, by the whole Court in Conſtables caſe of Pickenham in Norfolk.

¶ *In manus Domini*, Dominus manerii. The Lord of a Mannor is deſcribed (e) by Fleta as he ought to be, in theſe words. In omnibus autem & ſupra omnia decet quemlibet dominum verbis eſſe veracem, & in operibus fidelem, Deum & juſtitiam amantem, fraudem & peccatum odientem, voluntarioſque, malevolos, & injurioſos contemnentem, & apud proximos pietatem vultumque motibilem & plenum, ipſius enim intereſt potius conſilio quam viribus uti, propriove arbitrio: non cujuſlibet voluntarii juvenis meneſtralli, vel adulatoris, ſed juriſperitorum virorum fidelium & honeſtorum, & in pluribus expertorum conſilio debet favere. Qui bene ſibi vult diſponere & familiæ ſuæ, ſcire veram executionem terrarum ſuarum neceſſarium erit, ut perinde ſciat quantitatem ſuarum facultatum & finem annuarum expenſarum. And the reſidue is fit for every lord of a Mannor to know and follow, which were too long here to be recited, only his concluſion having ſpoken of the lords revenue and expences I will adde, Quæ omnia diſtincte ſcribantur in membranis, ut perinde ſagacius vitam ſuam diſponat & facilius convincat mendacia compoſtariorum.

(e) Fleta lib.2.c.65.& 71

(f) If the lord of the Mannor for the time being be ſeiſed for life or for years, gardian, or any that hath any particular intereſt, or tenant at will of a Mannor (all which are accounted in law Domini pro tempore) do take a ſurrender into his hands, and before admittance the ſeiſed for life dieth, or the years intereſt or cuſtody do end or determine, or the will is determined, though the lord cometh in above the leaſe for life or for years, the cuſtody or any other particular intereſt or tenancy at will, yet ſhall he be compelled to make admittance according to the ſurrender, and ſo it was held en 17. Eliz. in the Earl of Arundels caſe, which I my ſelf heard.

(f) See more of this li.4. the caſes of copiholds. Trin.1.Ja.Rot.854. inter Shapland & Ridler in repl. in Com.Banco, the caſe of the gardian in Socage adjudged.

¶ *Et dat Domino de fine.* For the ſignification of this word (finis) Vide Sect.174.183, 194.441.

Of Fines due to the lord by the copiholder, ſome be by the change or alteration of the lord, and ſome by the change or alteration of the tenant, the change of the lord ought to be by Act of God, otherwiſe no fine can be due, but by the change of the tenant either by the act of God, or by the act of the party, a fine may be due: for if the lord do alledge a cuſtom within his Manor to have a fine of every of his copiholders of the ſaid Manor at the alteration or change of the lord of the Manor, be it by alienation, demiſe, death, or otherwiſe; This is a cuſtom againſt the law, as to the alteration or change of the lord by act of the party, for by that means the copiholders may be oppreſſed by multitude of fines by the act of the lord. But when the change groweth by the act of God, there the cuſtom is good as by the death of the lord. And this, upon a caſe in the Chancery (g) referred to Sir John Popham Chief Juſtice, & upon conference with Anderſon, Periam, Walmeſley, and all the Judges of Serjeants Inn in Fleetſtreet was reſolved, and ſo certified into the Chancery. But upon the change or alteration of the tenant, a fine is due unto the lord.

(g) T.39.Eliz. between the Copiholders of the Mannor of Guiltirns, in the County of Northumberland an Armſtrong, Lord of the Manor, in Chancery.

Of fines taken of copiholders ſome be certain by the cuſtom, and ſome be incertain, but that fine though it be incertus, yet muſt it be rationabilis. And that reaſonableneſs ſhall be diſcuſſed by the Juſtices upon the true circumſtances of the caſe appearing unto them, and if the Court where the cauſe dependeth, adjudgeth the fine exacted to be unreaſonable, then is not the

Copi-

Copiholder compellable to pay it. And ſo it was adjudged: (h) for all exactions is abhorred in Law. See more concerning fine of copiholders in my Reports (i) which are ſo plainly there ſet down, as they need not be rehearſed here.

(h) Paſch. 1. Jac. in com. banco rot. 1845. inter Stallon & Brady.
(i) Lib. 4. the caſes of Copiholds.

Sect. 75.

ET tiels tenãts ſont appelles Tenants per copie de Court Rolle, pur ceo que ils nont auter evidence concernant lour tenements, forſque les Copies des Rolles de Court.

And theſe tenants are called tenants by Copy of Court Rolle, becauſe they have no other evidence cõcerning their tenements, but only the Copies of Court Rolls.

Ils nont anter evidence. This is to be underſtood of evidences of alienation, for a releaſe of a right by Deed a copiholder (that cometh in by way of admittance) may have, and that is ſufficient to extinguiſh the right of the copyhold which he that maketh the releaſe had.

Sect. 76.

ET tiels tenãts ne implederõt, ne ſerront impledes de lour tenements p̃ bieſe le Roy. Mes ils voilent impleder auters pur lour tenements, ils averont un plaint fait en le Court le Seignior en tiel forme, ou a tiel effect: A. de B. queritur verſus C. de D. de placito terræ, videlicet, de uno meſuagio, quadraginta acris ter', quatuor acris prati, &c. cum pertin'. & facit proteſtationẽ ſequi querelam iſtam in natura brevis domini Regis aſſiſæ mortis anteceſſoris ad communẽ legẽ, vel brevis domini Regis aſſiſæ Novæ diſſeiſinæ ad communẽ legẽ, aut in natura brevis de for-

And ſuch tenants ſhall neither implead nor be impleaded for their tenements by the Kings Writ, but if they will implead others for their tenements, they ſhall have a plaint entred in the Lords Court in this form, or to this effect: A. of B. complains againſt C. of D. of a plea of land, viz. of one meſuage, forty acres of land, four acres of meadow, &c. with the appurtenances, and makes proteſtation to follow this complaint in the nature of the Kings writ of aſſiſe of Mortdanceſter at the Common Law, or of an aſſiſe of novel diſſeiſin, or formedon in the diſcender at the

Tiels tenants ne implederont, ne ſerront impleде, &c. This is evident, and needs no explanation.

Mes ſils voilent impleder auters, ils averont, &c. But the caſe that the Demandant in a plaint in nature of a real action recovereth the land recouerable, what remedy for the party grieved? For he cannot have the Kings writ of falſe judgment in reſpect of the baſeneſs of the eſtate and tenure, being in the eye of the Law but a Tenant at will, and the freehold being in another, he ſhall have a petition to the Lord in the nature of a writ of falſe judgment, and therein aſſign errors, and have remedy according to Law.

4. H. 4. 34. adjudged in Parliament.

14. H. 4. 34. 1. H. 5. 11. Vet. N. B. 18. 13. R. 2. tit. Faux judgm. 7. E. 4. 19. 21. E. 4. 80.

De forma donationis in diſcender ad communem legem. By the opinion of Littleton as there may be an eſtate tail by cuſtom with the co-operation of the ſtatute of W. 2. cap. 1. ſo may he have a Formedon in diſcender, but as the ſtatute without a cuſtom extendeth not to copiholds, ſo a cuſtom

Lib. 3. fo. 8. 9. in Heydons caſe. Lib. 4. fo. 22. 23. 15. H. 8. Br. tit. talle.

ſtom without the ſtatute cannot create an Eſtate taile. Now it is not a ſufficient proof that lands have been granted in taile, for albeit lands have anciently and uſually been granted by copie to many men and to the heirs of their bodies, that may be a

(y) P.29.Eliz.inter Hill & Upcheic. Cuſtome deins le manor de Overhall in Eſſex.
21.Eliz.Dier 366.
23.Eliz.Dier 373.

fee ſimple conditional as it was at the common Law. But if a remainder have been limited over ſuch Eſtates and enjoyed, or if the iſſues in taile have avoided the alienation of the anceſtor, or if they have recovered the ſame in writs of Formedon in the diſcender, theſe and ſuch like de proofs of an eſtate taile. (y) But if by cuſtom, copihold may be intailed, the ſame by like cuſtom, by ſurrender may be cut off, and ſo hath it been adjudged, (z) ſome have holden that there was a Formedon in the diſcender at the common Law.

(z)10.E.2.formdon.55.
21.E.3.47.Pl.Com.240.
4.E.2.formdon.50.

Sect. 77.

¶ *Car (ileſt dit) que ſi le Seignior, &c.* And here Littleton ſaith truly that it is ſaid ſo, for ſo it is ſaid in 13.E.3.13.R.2.32. H.6.& 7.E.4.19.

13.E.3.tit.præſcript.20.
13.R.2.feiux judgment 7
32.H.6.tit.Subpena 2.
7.E.4.19.

But he ſetteth not down his own opinion, but rather to the contrary, as hereafter in this chapter appeareth. But now Magiſtra rerum Experientia, hath made this clear and without queſtion, that the Lord cannot at his pleaſure put out the lawful Copiholder without ſome cauſe of forfeiture, and if he do, the copiholder, may have an action of treſpaſs againſt him, for albeit he is tenens ad voluntatem Domini, yet it is ſecundum conſuetudinem Manerii.

Vide Sect.81.82.84.132.

(b) And Britton ſpeaking of theſe kind of Tenants ſaith thus, Et ceux ſont privileges en tiel maner que nul de les doit ouſter de

(b)Vid.42.E.3.25. Britt.fol.165.

¶ ET coment que aſcun tiels tenants ont inheritance ſolonque le cuſtome del Manor, unt ils nont eſtate forſque a volunt le Seignior ſolonque le courſe del common ley. Car il eſt dit, ſi le Seignior eux ouſta, ſils nont auter remedy forſque de ſuer a lour Seigniors per petition, car ſils averont auter remedy, ils ne ſerront dits tenants a volunt le ſeignior ſolonq; le cuſtome del Manor, mes le Seignior ne voile enfreinder le cuſtom q̄ eſt reaſonable en tiels caſes.

¶ Mes Brian Chiefe Juſtice dit, que ſon opinion ad touts foits eſte, & unquez ſera, ſi tiel teñt per le cuſtome payant les ſervices ſoit eject per le Seignior que il avera action de trēs vers luy, H.21.Ed.4. Et iſſint fuit lopinion de Danby chiefe Juſtice, M. 7. Ed. 4.

And although that ſome ſuch Tenants have an inheritāce according to the cuſtom of the Manor, yet they have but an Eſtate at the will of the lord according to the courſe of the cōmon law. For it is ſaid, that if the Lord do ouſt them, they have no other remedy but to ſue to their Lords by petition, for if they ſhold have any other remedy, they ſhould not be ſaid to be tenants at will of the lord according to the cuſtom of the Manor. But the lord cānot break the cuſtom which is reaſonable in theſe caſes.

¶ But *Brian* chief Juſtice ſaid, that his opinion hath alwaies been and ever ſhall be, that if ſuch tenant by cuſtom paying his ſervices be ejected by the lord, he ſhal have an actiō of treſpaſs againſt him. *H.* 21. *Ed.*4. And ſo was the opinion of *Danby* chief Ju-

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Car il dit que le tent per le curome eſt cibien enheriter de aver ſon terre ſolonque le cuſtome, come celuy que ad franktenement al Common Ley.

ſtice in 7. Ed. 4. For he ſaith that Tenant by the cuſtom is as well inheritour to have his land according to the cuſtom as he which hath a freehold at the Common Law.

tiels tenements, tam come ils font les ſervices que a lour tenements appendent, ne mil ne poet lour ſervices acreſtre ne change a faire autres ſervices ou pluis. And herewith agreeth Sir Robert Danby, chief Juſtice of the Court of Common pleas, M. 7. E. 4. 19. and Sir Thomas Brian his ſucceſſor, M. 21. E. 4. 80. viz. that the Copiholder doth

his cuſtoms and ſervices, if he be put out by his Lord, he ſhall have an action of treſpaſs againſt him.

Chap. 10. Sect. 78.

Tenant pr le Verge.

TEnants p le verge, ſont en tiel nature come tenants per le copy de Court Roll. Mes la cauſe pur que ils ſont appelles tenants p la Verge, eſt p ceo que quãt ils voilẽt ſurrender lour tenemẽts en le main lour ſeignior al uſe dun auter, ils averont un petite Verge (per le cuſtõe) en lour main, le quel ils bailera al Seneſchall, ou al Balife ſolonque le cuſtome & uſe del Manor & celuy que avera la terre, prendra meſme la terre en le Court, & ſon priſel ſera enter en le roll, & le Seneſchal, ou le balife, ſolonq; le cuſtome delibera a ce-

TEenat by the Verge are in the ſame nature as tenants by copy of Court roll. But the reaſon why they be called Tenants by the Verge is, for that whe they will ſurrender Their Tenements into the hands of their Lord to the uſe of another, they ſhall have a little rod (by the cuſtom) in their hand, the which they ſhall deliver to the ſteward, or to the Bailife according to the cuſtom of the manor, and he which ſhall have the land ſhall take up the ſame land in Court, and his taking ſhall be entred upon the roll, and the ſteward or balife, according to the cuſtom

¶ *Tenãts per le Verge.* This Tenant per le Verge is a meer copiholder and taketh his name of the Ceremony of the Verge. Tenure in Villenage, or by baſe tenure is thus deſcribed by Britton, (a) Villenage eſt, tenure de demeines de cheſeun Seignior baille a tener a ſon vollunt per Villeines ſervices de enprover al opes le Seignior, & liverè per verge & nient per eſcrite de eſtrit, ne per ſucceſſion de heritage dont gards de mariages ne autres ſervices reals come homage & relieſes ne ponent des ammoines de demeines ne de villenage eſts demand. H. 4. 33.

(a) Britton fol. 165. a. F. N. B. fol. 12. Liberatio per Virgam

¶ *A le Seneſchall.* (which we call a ſteward) Seneſchallus is derived of ſein a houſe or place, and Schalc an officer or governor, ſome ſay that ſen is an ancient word for Juſtice, ſo as Seneſchal ſhould ſignifie officiarius Juſtitiæ, and ſome ſay that Steward is derived of Stewe (that is) a place, and Ward, that ſignifieth a Keeper, Warden or Governor: and others that it is derived of Stede, that ſignifieth a place alſo, and Ward as if were the keeper or governor of that place; but it is a word

of many ſignifications. In this place it ſignifieth an officer of Juſtice, viz. a keeper of Courts, &c. Fleta deſcribeth the office and duty of this officer at large moſt excellently: Videat ſibi dominus de ſeneſchallo circumſpecto & fideli, viro provido & diſcreto & gratioſo, humili, pudico, pacifico, & modeſto, qui in legibus conſuetudinibusque provincia & officio ſeneſchalcia ſe cognoſcat & jura domini ſui in omnibus teneri affectet, quique ſubballivos domini in ſuis erroribus & ambiguis ſciat inſtruere & docere, quſque egenis parcere, & qui nec prece vel pretio velit à tramite juſtitiæ deviare, & perverſe judicare, cujus officium eſt curias tenere maneriorum & de ſubtractionibus conſuetudinem, ſerviciorum, reddituum, ſectarum ad curiam, mercata, molendina domini & ad viſus frankpledgi aliarumque libertatum domino pertinentium inquirat, &c. The reſidue pertaining to his office is worth your reading at large.

Vide Sect.92.& 379. Fleta lib. 2.cap.66. Vide Statut. de extent. manor. 14.E.1.

Every Steward of Courts is either by Deed or without Deed; for a man may be retained a Steward to keep his Court Baron and Leet alſo belonging to the Manno, without Deed, and that retenure ſhall continue until he be diſcharged. The Lord of a Manno may make admittances out of Court and out of the Manno alſo, as at large appeareth in my Reports.

Vide lib.4.caſes de Copiholds, fo. 26,27,30.

Sect. 79.

¶ *Le bailie.* This word bailie as ſome ſay cometh of the French word Bailife, in Latin ballivus, but in truth Baily is an old Saxon word, and ſignifieth a ſafe keeper or protector, and baile or ballum is ſafe keeping or protection: And thereupon we ſay when a man upon ſurety is delivered out of priſon traditur in ballium, he is delivered into baile, that is, into their ſafe keeping or protection from priſon: and the ſheriff that hath Cuſtodiam Comitatus, is called ballivus, and the County balliva ſua.

Vide Lamb expoſition of Saxon words.

¶ *Reve*, is derived of the Saxon word gereſa or gereve; and by contraction or rather corruption gréve, or Reve, and is in Latin præfectus or præpoſitus. It ſignifies as much as appruator a diſpoſer or director, as woodreeve, ſheep reeve, ſhire reeve, &c. whereof more ſhall be ſaid hereafter. Vide Fleta lib. 2. cap. 67. where he treateth of the office of the Bailife, and cap. 69. de officio præpoſiti, of

Fleta lib.2.ca.67.& 69.

¶ ET aucy en diverſ Seigniories & mannors, il y ad tiel cuſtome, ſi tiel tenant que tient per cuſtome voloit alièner ſes terres ou tenements, il poit ſurrender ſes tenemẽts a le Baily, ou a le Reeve, ou a deux prodes homes del Seigniory, al uſe ceſtuy que avera le terre, daver en fee ſimple, fee taile, ou pur terme de vie, &c. Et tout ceo ils preſenteront al prochiene Court, & donq̃ celuy q̃ avera la tre p Copy de Court Rol, avera meſme la tre ſolonq̃ lentẽt del ſurrender.

AND alſo in divers Lordſhipps and mannors there is this cuſtom, viz. if ſuch a tenant which holdeth by cuſtom will alien his lands or tenements he may ſurrender his tenemẽts to the Bailiff or to the Reeve, or to two honeſt men of the ſame Lordſhip to the uſe of him which ſhall have the land to have in fee ſimple, fee taile or for term of life, &c. & they ſhal preſent al this at the next court, & thẽ he which ſhall have the land by copy of Court Roll, ſhall have the ſame according to the intent of the ſurrender.

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the office of the reeve, and what belongeth of duty and right to either of them, which words are too long here to be inserted, only this I will take out of him, balivus autem cujuscunque manerii esse debet in verbo verax, & in opere diligens & fidelis, ac pro discreto approuitore cognitus plegiatus & clericus qui de communioribus legibus pro tanto officio sufficienter se cognoscat, & quod sit ita justus, quod ob vindictam seu cupiditatem non quærat versus tenentes domini nec alios, &c. Præpositus autem tanquam appruator & cultor optimus, &c. domino vel ejus seneschallo palam debet presentari cui injungatur officium illud indilate, non ergo sit piger aut somnolentus sed efficaciter & continue commodum domini adipisci nitatur & exarare, &c. The custome concerning both the officers being weighty your reading

¶ *A le bailee ou a le Reeve.* Littleton intendeth into the hands of the Lord by the hands of the Bailiff or the Reeve.

¶ *Ou al deux probes homes del seignierie.* The custom doth guide their surrenders out of Court, and the custom must be pursued. Vid. lib. 4. fol. 25. Kite & Quaintins case.

¶ *Et tout ceo ilt presenterent ad procheine court, &c.* By the surrender out of Court the Copihold estate passeth to the Lord under a secret condition that it be presented at the next Court according to the custom of the manor. And therefore if after such a surrender, and before the next Court he that made the surrender dieth, yet the surrender standeth good; and if it be presented at the next Court Ce' a que use shall be admitted thereunto; but if it be not so was it clearly holden Pasc. 14. Eliz. in the court of common Pleas which I my self heard.

Sect. 80.

¶ ET issint est a-cavoire, que en diverg seignioziez, & diverg manoz, sont pluſoz & diverg customes en tielz caſes, quant a prender tenements, & quant a pleder, & quant ag auterg choſes & customes a faire, & tout ceo que nest pas encounter reaſon, poit bien estre admitte & allow.

AND ſo it is to be underſtood, that in divers Lordſhips, and in divers manners, there be many and divers cuſtoms, in ſuch caſes as to take tenements, and as to plead, and as to other things and cuſtoms to be done, and whatſoever is not againſt reaſon may well be admitted and allowed.

¶ *Sont pluſors & divers cuſtoms.* This was cautiouſly ſet down, for in reſpect of the variety of the cuſtoms in moſt Mannors, it is not poſſible to ſet down any certainty, only this incident inſeperable every cuſtom muſt have, viz. that it be conſonant to reaſon, for how long ſoever it hath continued, if it be againſt reaſon, it is of no force in Law.

¶ *Encounter reaſon.* This is not to be underſtood of every unlearned mans reaſon, but of artificial and legal reaſon warranted by authority of Law: Lex eſt ſumma ratio.

Sect. 81.

¶ *Ils ſont appelles tenants per baſe tenure.* Of this ſufficient hath been ſpoken before.

¶ ET tielz tenants q̄ teignent ſolonc̄ le cuſtome dū ſeignioꝛie, ou dun manoꝛ, coment q̄ils ont eſtate denheritance ſolonc̄ le cuſtome del Seignioꝛy ou man̄ unc̄ pur ceo q̄ils nō ſont

AND theſe tenats which hold according to the cuſtom of a lordſhip or manor, albeit they have an eſtate of inheritance according to the cuſtom of the lordſhip or mannor, yet becauſe

tenantstenement per le cours del common ley, ils sont appelles Tenants p base tenure.

they have no freehold by the course of the common Law, they are called tenants by base tenure.

Sect. 82.

Tenant a volunt solonque le custom puit aver estate denheritance, &c.

Yow note that Littleton alloweth that by the custom of the manor, the Copiholder hath an inheritance, and consequently the Lord cannot put him out without cause.

Mes si home, &c. voile lesser terres ou tenements a un auter a aver & tener a luy & ses heirs a volunt le lessor ceux parols (a les heires de le lessee) sont voides, car en ceo cas si le lessee devie & son heire enter le lessor avera action de trespasse envers luy, &c. By which it is proved that by the death of the lessee the estate is absolutely determined, which is proved by many books: the heir cannot enter, the lessor shall have an action de trespas, &c. before any entry made by the heir.

10. E. 4. 18. 22. E. 4. 12. 2. R. 2. barre 237. 11. H. 7. 22. 21. H. 7. 12.

ET divers diversities y sont perenter tenant a volunt, que est eins per leale son lessor per le course del common ley, & tenant solonq; le custome del manor en le forme avantdit. Car t a volūt solonq; le custom puit aver estate dēheritāce (come est avantdit.) al volūt le seignior solōq; le custome & usage del manor. Mes si home ad terres ou Tenements, queux ne sont deins tiel manor ou Seigniorie, ou tiel custome ad este use en le forme avātdit, & voile lesser tiels terres ou tenemūts a un auter, a aver & tener a luy & a les heires a le volunt le lessor ceux parolx (a les heires de le lessee) sont voids. Car en cest case si le lessee devie & son heire enter le lessor avera bon action de trespas. vers luy, mes nemy illint envers lheire le terre per le custome en aucun cas, & pur ceo que le custom de le manor ēaucun cas luy puit aide de barrer son seignior en action de trespass, &c.

AND there are divers diversities betweē tenant at will which is in by lease of his lessor by the course of the Common Law, & tenant according to the custom of the Manor in form aforesaid. For tenāt at will according to the custom may have an estate of inheritance (as is aforesd.) at the wil of the lord, according to the custom & usage of the Manor. But if a mā hath lands or tenemēts which be not within such a Manor or lordship where such a custom hath been used in form aforesaid, and will let such lands or tenemēts to another, to have & to hold to him, and to his heirs at the will of the lessor, these words (to the heires of the Lessee) are void. For in this case if the lessee dieth, and his heir enter, the lessor shall have a good actiō of trespass against him, but not so against the heir of Tenant by the custom in any case, &c. for that the custō of the manor in some case may aid him to barr his Lord in an action of Trespass, &c.

¶ *Pur ceo que le cuſtome de le Mannor en aſcun caſe luy puit aider de barrer ſon ſeignior en action de treſpaſs, &c.* Hereby it appeareth that by the opinion of Littleton, the Lord againſt the cuſtome of the Mannor cannot ouſt the copiholder.

Sect. 83.

¶ Item lun Tenant per le cuſtome ẽ aſcuns lieux doit repairer & ſuſteiner ſes meaſons, & lauter tenant a volunt nemy.

Alſo the one Tenant by cuſtome in ſome places ought to repair and uphold his houſes, and the other Tenant at will ought not.

¶ *Per le Cuſtome* For what a copiholder may or ought to do, or not do, the cuſtoms of the Mannor (a) muſt direct it, for Conſuetudo Manerii eſt obſervanda. (b) But if there be no cuſtom to the contrary, muſt either permiſſive or voluntary of a copiholder, is a forfeiture of his copihold.

(a) Bracton lib.2.fol.76

(b) Vide lib.4.fol.21.22. &c. in caſes de Copiholds.

Sect. 84.

¶ Item lun Tenant per le cuſtome ferra fealtie, & lauter nemy. Et pluſors auters diverſities y ſont perenter eux.

Alſo the one Tenant by the cuſtom ſhall do fealty and the other not, and many other diverſities there be between them.

¶ *Un tenant per le cuſtome ferra fealtie, & lauter nemy.* And the doing of fealty by a copiholder proveth, that a copiholder ſo long as he obſerves the cuſtom of the Mannor and payeth his ſervices hath a fixed E-

Vide Sect.130.

ſtate. For Tenant at will that may be put out at pleaſure ſhall not do fealty. For to what end ſhould a man ſwear to be faithful and true to his Lord, and ſhould bear faith to him which he claimeth to hold of him, and that lawfully he ſhall do his cuſtoms and ſervices, &c. when he hath no certain eſtate, but may be put out at the pleaſure of the Lord, or he himſelf may determine it at his pleaſure, of theſe kind of cuſtomary Tenants; and of many things concerning them, you may read more in the fourth book of my Reports, fol. 21. 22. 23. &c. Thus much as I have here ſet down, may ſuffice, for the underſtanding of ſuch Caſes and Opinions as Littleton hath expreſſed.

Lib.4.fol.21.22.23.&c.

Finis Libri primi.

THE SECOND BOOK of the first Part of the Institutes of the LAWES of ENGLAND.

CHAP. I. *Homage.* Sect. 85.

HOmage ẽ pluis honorable ſervice, & pluis humble ſervice a reverence, q̃ franktenant puit faire a ſõ Seignior. Car quãt le tenant ferra homage a ſon Seignior, il ſerra diſeinct, & ſon teſt diſcover, & ſon Seignior ſerra, & le tenant genulera devant luy ſur ambideux genues, & tiendra ſes maines extendes, & joyntes enſemble enter les maines l' Seignior, & illint dirra: Jeo

HOmage is the moſt honorable ſervice & moſt hũble ſervice of reverence that a Franktenant may do to his Lord: For when the tenant ſhall make homage to his Lord, he ſhall be ungirt, and his head uncovered, and his Lord ſhall ſit, and the tenant ſhall kneel before him on both his knees, and hold his hands joyntly together between the hands of his Lord, and ſhall ſay thus: I become your man

THe Author having taught us in his former book the ſeveral diſtinct eſtates of lands and tenements as moſt neceſſary to be known, for the underſtanding of theſe two other books doth in this ſecond book treat of the tenures and ſervices, whereby the ſaid lands and tenements been holden, which he diſtributeth into twelve parts, viz. Homage, Fealty, eſcuage, Knights ſervice, Socage, Frankalmoigne, Homage Auncestrell, Grand Serjeanty, Petit Serjeanty, Tenure in Burgage, in Villenage, and into Rents, wherein his method is moſt excellent, for he beginneth with Homage, becauſe it is the moſt humble ſtreict of tenures, expreſſing the duty of the tenant to his Lord, and the affectionate love and protection of the Lord towards his tenant, as hereafter ſhall appear. Secondly, Fealty, a ſacred ſtreict, expreſſing by

oath

oath his fidelity to his Lord.

Thirdly, Escuage, which is Servitium Scuti, the service of the shield.

Fourthly, Knights service, for the defence of the Realm against outward hostility and invasions, which the better might be effected, if such duty, fidelity, and love were between Lords and tenants, as ought to be, and as the law expecteth.

Fifthly, Socage, the service of the Plough, aptly placed next Knights service, for that the Ploughman maketh the best soldier, as shall appear in his proper place.

Sixthly, Frankalmoigne, Service due to Almighty God, which ought to be the worthiest for two causes: First, for that he is the most holy and most honorable place: And secondly, because the first five preceding Tenures and services, and the other six subsequent, must all become prosperous and useful, by reason of Gods true Religion and service, for Nunquam prospere succedunt res humanæ, ubi negligunter divinæ: Wherein I would have our Student follow the Advice given in these Ancient Verses, for the good spending of the day.

Sex horas somno, totidem des Legibus æquis.
Quatuor orabis, des Epulisque duas.
Quod superest ultro sacris largire camœnis.

Seventhly, Homage auncestrell, Ancient Families, enjoying with their blood the Ancient Inheritance of their Forefathers, as a great blessing of the Almighty.

8. & 9. Serjeanty grand & petit, due to the King only, to whom the highest and most eminent honor, Regality, and supremacy of all kind is due; which hath two notable effects: First, Imperii Majestas est tutelæ salus, according to the old Rule: And secondly, it is an assured means of long continuance of Houses and Families in prosperous estate, whereof our Author speaketh in the chapter before.

10. Then followeth the Tenure of Burgage, of Ancient Burgs and Cities, &c. which are to be supposed for the honour of the King, and for the maintenance of Trade and Traffique, the life of all common wealths, especially of Islands.

11. Villenage, for the performance of service, yet necessary service for the cleansing of Cities, Boroughs, Mannors, &c. and for the better manuring of Arrable Grounds, and increase of Husbandry.

12. And lastly, Tenure by Rents, which are called Vivi redditus, because the Lords and Owners thereof do live by them, which they shall enjoy the better, & Trade and Traffique is maintained, and the Mother-commonalties, which are rich and necessary, holden up and saluted as reverentiall duties. And now understanding his method, let us perule our Authors words.

And as our Author began his first book with Jus simple, which is the most principal and worthiest estate, so he beginneth his second book with Homage, which is the most honourable and humble service.

(a) Glanv. li. 9. ca. 1. Bract. fo. 78. 80. Brit. fo. 170. 172. Flet. li. 3. c. 16. Mir. c. 3. de Homage, & l. 5. Rid. 1.

HOmage, is derived of (a) Homo, and it is called Homage, because when he doth his service, he saith, Jeo deveigne vostre home: And in English Homage is called Manhood, so as the manhood of his Tenant, and the homage of his Tenant is all one. Fidelitatis quidem debet esse Domini & Homagii fidelitatis connexio, ita quod quantum homo debet Domino ex homagio, tantum illi debet Dominus ex Dominio præter salam reverentiam.

(b) Lib. Rub. ca. 55.

Foyal & Loyal. These words are of great extent, for they extend to the obligation of the Lords counsell in whatsoever is honest and profitable. (b) Omnis homo debet idem Domino fuo de quo tenet mentionis fuis, & terræ in honore, & observatione consilii sui per honestum & utile (as may be gathered in their words Foyal & Loyal) salva fide Deo & terræ Principi.

Service

¶ ***Service.*** (c) Servitium in Lege Angliæ regulariter accipitur pro ſervitio quod per tenentes Dominis ſuis debetur ratione feodi ſui. But ſervitium eſt duplex, Spirituale, whereof more ſhall be ſaid in the chapter of Frankalmoigne; & Temporale, whereof our Author here treateth, And he beginneth with homage. Firſt, becauſe it is moſt honourable, for, Honor plus eſt in honorante, quam in honorato. 2. It is pluis humble de reverence, and both of theſe for five cauſes on the part of the Tenant. Firſt, the Tenant when he doth his homage is diſcinctus, diſarmed or ungarded. Secondly, Nudo capite, bare headed. Thirdly, Ad pedes Domini ſuper genua projectus. Fourthly, Ambas manus junctas inter manus Domini porrigit. Fifthly, Per verba omni ſupplici veneratione plena; he ſaith, Jeo deveigne voſtre home, &c. And for three cauſes on the part of the Lord: Firſt, The Lord doth ſit. Secondly, He incloſeth his Tenants hands between his own. Thirdly, The Lord ſitting kiſſeth the Tenant. Prudent Antiquity did for the more ſolemnity and better memory and obſervation of that which is to be done, expreſs ſubſtances under ceremonies. (c) 2.H.4.6.

Nil ſine prudentia fecit ratione vetuſtas.

¶ ***Jeo deveigne voſtre home de vie & de member.*** And therefore he is diſcinctus, for that he muſt never be armed againſt, or oppoſite to his Lord, but both life and member muſt be ready for the lawful defence of his Lord. Glanvil & Mir.ubi ſupra.

¶ 2. ***De Terrene honor.*** Expreſſed by kneeling at the feet of his Lord. Bract.fol.80.

3. Debet quidem tenens manus ſuas utraſque ponere inter manus utraſque Domini ſui, per quod ſignificetur ex parte Domini protectio, defenſio, & warrantia, & ex parte tenentis reverentia & ſubjectio. So as the holding up of the Tenants hands betokeneth reverence and ſubjection, and the Lords incloſing of his Tenants hands between his own, betokeneth protection and defence. Britton fol.173.b.2c. Fleta lib.2.cap.16.

¶ 4. ***Et a vous ſerra foyal & loyal, & foy a vous portera, &c.*** This faith, Fides, or Fœdus perpetuum, this perpetual league between the Lord and the Tenant is expreſſed by the Lords kiſſing of the Tenant: And ſome ſay, That Fœdus dicitur à fide, quia fides interponitur: And ſo firm and ſtrong was this league between them, that by the Ancient law of England, Nihil facere poteſt tenens propter obligationem homagii, quod vertatur Domino ad exhæredationem, vel aliam atrocem injuriam. Nec Dominus tenenti è converſo, quod ſi fecerint diſſolvitur & extinguitur homagium omnino & homagii connexio & obligatio, & erit inde juſtum judicium cum venerit contra homagium & fidelitatis Sacramentum, quod in eo in quo delinquunt puniantur, s. in perſona Domini, quod amittat dominium, & in perſona tenentis, quod amittat tenementum. Bract.ubi ſupra. Britt.fol.174.

¶ ***Des tenements queux jeo claim a tener de vous.*** Britton ſaith, That (a) in doing of homage he muſt name the Lands or Tenements for which he doth homage in certainty, and the reaſon is, Ne in captione homagii contingat Dominum per negligentiam decipi vel per errorem. (a) Britt.ubi ſupra. Glanvil lib.9.cap.1. Mir.cap.3.de Homage.

For the better underſtanding of that which ſhall be ſaid hereafter, it is to be known, That firſt, there is no land in England in the hands of any ſubject, (as it hath been ſaid) but it is holden of ſome Lord by ſome kind of ſervice, as partly hath been touched before.

Secondly; All the lands (b) within this Realm were originally derived from the crown, and therefore the King is ſoveraign Lord, or Lord paramount, either mediate or immediate of all and every parcel of land within the Realm. (b) 18.E.3.35.44.E.3.5. 48.E.3.9.8.H.7.12.

Thirdly, That in Ancient time Lords upon the creation of their Tenures did not only reſerve Rents, ſervices, and profits, &c. for which they might diſtrein and have other remedy, but alſo took an humble ſubmiſſion of his Tenant by promiſe and oath, (for to homage fealty is incident) to be true and faithful to him for the Tenements holden of him, which ſubmiſſion is called homage and fealty, according to the tenure reſerved.

¶ ***Salve le foy que jeo doy a noſtre Seignior le Roy.*** Both becauſe there is Homagium ligeum, which is due to the King only, and alſo becauſe he is ſoveraign Lord over all. Glanvil lib.9.c.1.Mir.c.3 de Fealty.Bract.ubi ſupr. Britt.ubi ſupra.

I have ſeen an Ancient Record in Anno 6. Edw. 1. in theſe words, Michael de North qui ſequitur pro Rege quæritur quod cum Dominus Rex ratione regiæ dignitatis & Coronæ ſuæ tale habeat privilegium quod nullus in regno ſuo de aliquo qui ſit in regno Angliæ alicui homagium facere debeat, vel aliquis hujuſmodi homagium ab aliquo recipere debeat niſi facta mentione de homagio Domino Regi debito eidem domino Regi fideliter obſervand' Walterus Exon' Epiſcopus, in contemptu domini Regis & ad manifeſtam quoad privilegium prædictum ipſius domini Regis exheredationem, & ad damnum & dedicus ipſius domini Regis ad Valentiam decem Mill' librarum de Henrico de Pomeray Thoma de Kanc' Johanne be bello prato Laurentio filio Ric. Johanne le Soes, Willielmo de Alex', Eudone Inter inquiſ.apud Lancefton, anno 6.E.1.Cornub.in Theſ.

Eudone de Tranael, Rogero le gros, Johanne le Lunge, Radulpho de Bevill, Guidone Novant, Willielmo de Rouskerrek, & Hen. Cannel accepit ſervitia contra privilegium prædict', nulla facta mentione de homagio & fidelitate Domino Regi debitis. And Judgment in the end was given againſt the ſaid biſhop.

¶ *Roy.* Our Anceſtors the Saxons termed him Coning or Cyning, a name ſignifying power and ſkill, which by way of contraction we now call King. This name the Saxons with a ſmall alteration had from the Brittains who called him Koningh or Koninckc: in French he is called Roy, in Italian Re, in Spaniſh Rey, all derived from the Latine (Rex) of the true ſignification whereof you ſhall read (d) plentiful matter in our old books.

So as homage is divided firſt In homagium ligeum, & non ligeum.

2. In homagium anteceſſorium, & non anteceſſorium. It is here neceſſary to be known, what Tenant, that holdeth by homage ſhall do homage. (e) Item videndum quis poteſt homagium facere. Sciendum eſt quod quilibet liber homo tam maſculus quam femina, clericus & laicus, major & minor, dum tamen electi in epiſcopos, poſt conſecrationem homagium non faciant, quicquid fecerint ante, ſed tantum fidelitatem. Conventus autem Homagium non faciet de jure ſicut nec Abbas, nec Prior, eo quod tenent nomine alieno ſcilicet nomine Eccleſiarum.

(g) One within the age of 21. years may do homage, but Bracton ſaith he cannot do fealty, becauſe in doing of fealty he ought to be ſworn, which an Infant cannot be. But ſome opinion be in our books to the contrary, viz. that an Infant ſhall do fealty, but I take it to be meant of homage, and herewith (h) agreeth Britton who ſaith, Et touts foit que enfant deins age fait homage, pur ceo ne volons nous my que il face ſerement de fealty, jeſque a taunt que il ſoit de pleine age, & tout ſoit ceo comon dit del people que fait de enfant fait deins age ne ſoit fait my a tener eſtable: volons nequedent que cheſcun home & cheſcun feme de quel age que ils ſoient, facent homage a lour ſeignior ſolonque leſtatut de la grand charter.

Glanvill ſaith, (i) women ſhall do no homage, but Littleton ſaith that a woman ſhall do homage, but ſhe ſhall not ſay, Jeo deveigne voſtre feme, but Jeo face a vous homage, and ſo is Glanvill to be underſtood, that ſhe ſhall not do compleat homage.

(d) Mirror ca.1.ſect.2. & ca.2.ſect.1.& 2. Bract.fo.5,107.368.369. 340.Fleta lib.1.cap.5. Forteſcue cap.8.& 27. Stanf.pl.cor.98.99.& Prær.65.

(e) Glanvil lib.9.ca.1. Bracton fol.78.b. Britt.c.68,fo.170,171. Fleta lib.2,cap.16.

(g) Glanvil lib.9.cap.1. Bracton lib.2.78. Fleta lib.3.cap.16.acc. 21.E.3.40.26.E.3.63.64. 32.E.3.age.80.& tit. per quæ ſervitia.9. 13.H.4.5.33.H.6.16. 20.E.3.per quæ ſervic.24

(h) Britton fol.171.

(i) Glanvill lib.9.c.1. F.N.B.157.Regiſt.296. Britton ubi ſupra. Mirror cap.1.ſect.3.

Sect. 86.

NO man of Religion when(k) he doth homage ſhall ſay, Jeo deveign voſtre home, becauſe he hath profeſſed himſelf the man of God, yet ſhall he do homage, and ſhall ſay (l) Jeo face a vous homage, & a vous ſerra foyall & loyall, &c. And note that here Religion is taken largely, for it extends not only to regular perſons as Abbots and the like, but alſo to all Eccleſiaſtical perſons, as biſhops, Deans, or any other ſole eccleſiaſtical body politick, and ſo it is the uſe at this day, which alſo appears in our old books.

And it is to be obſerved that in old books and Records, the homage which a biſhop, Abbot or other man of Religion doth, is called Fealty, for that it wanteth theſe words (Jeo deveigne voſtre home.) But yet in Judgment of law it is homage, becauſe he ſaith, I doto you homage, &c. and ſo of a woman.

¶ Mes ſi un Abbe, ou un Prior ou auter home de Religion ferra homage a ſon ſeignior, il ne dirra: Jeo deveigne voſtre home, &c. pur ceo q̃ il ad luy profeſſe pur eſtre tant ſolement le home de Dieu: mes il dirra iſſint, Jeo vous face homage & a vous ſerra foial & loial, & foy a vous portera des tenements que jeo teigne de vous, ſalve la foy que jeo doy a noſtre ſeignior le Roy.

(k) Glanvil lib.1.cap.9. in fine. Britton lib.2.78. Bracton cap.68. Fleta lib.3.cap.16.

(l) Vid.Sect.96.& 133.

But if an Abbot or a Pryor or other man of Religion ſhall do homage to his Lord, he ſhall not ſay, I become your man, &c. for that he hath profeſſed himſelf to be only the man of God. But he ſhall ſay thus, I do homage unto you, and to you I ſhall be true and faithful, and faith to you bear for the Tenements which I hold of you, ſaving the faith which I do owe unto our Lord the King.

Sect.

Sect. 87.

¶ *Pur ceo que nest convenient, &c.* By this it appeareth (m) that Argumentum ab inconvenienti plurimum valet in lege, as often shall be observed hereafter. Non solum quod licet, sed quid est conveniens est considerandum; nihil quod est inconveniens est licitum.

(m) For like reasons ab inconvenienti. vide Sect. 138.139.231.269.440. 478.665.722.730. 21.H.7.13.F.N.B.230.d. 16.H.7.9.

ITem ſi feme ſole tenra homage a ſon ſeignior, et ne dirra: Jeo deveigne voſtre feme, pur ceo que nest convenient que feme dirra que el deviendra feme a aſcun home forſq; a ſa baron quant el eſt eſpouſe: mes il dirra, jeo face a vous homage, & a vous ſerra foial & loial, & foy a vous portera des tenements que jeo teigne de vous, ſalve la foy que jeo doy a noſtre teignior le Roy.

A ſole woman ſole ſhall do homage, ſhe ſhall not ſay, I become your woman, for it is not fitting that a woman ſhould ſay that ſhe will become a woman to any man but to her huſband when ſhe is married, but ſhe ſhall ſay, I do to you homage, and to you ſhall be faithful and true, and faith to you ſhall bear for the tenements I hold of you, ſaving the faith I ow to our Soveraign Lord the King.

Sect. 88.

ITem home puit heier en un bone note M. 15. E. 3. Lou un home & ſa feme fier homage & fealty en le common banke, q̄l eſt eſcrie ē tiel forū. Nota que J. Lewknor & Elizabeth ſa feme, fier homage a W. Thorpe en ceſt maner. Lun & laut tiendront joint mēt lour mains enter les mains W. T. & le baron dit en ceſt forme: Nous vous ſerromus homage, & foy a vous porterons, pur les tenements q̄ nous teignomus de J. vē conuſor q̄ a vous ad graunt noſtre ſerbices en B & C. & auters villes, &c. encount touts gents: ſalve la foy que nous devons a noſtre ſeig-

ALſo a man may ſee a good note in M. 15. E. 3. where a man and his wife did homage and fealty in the Common Place, which is written in this form: Note that J. *Lewknor* & *Eliz.* his wife did homage to *W. Thorpe* in this manner: the one and the other held their hands joyntly between the hands of *W. T.* and the Huſband ſaith in this form: We do to you Homage, and faith to you ſhall bear for the tenements which we hold of *A.* your Conuſor, who hath granted to you our ſervices in *B.* and *C.* and other Towns, *&c.* againſt all Nations, ſaving the faith which we ow to our Lord the King and to his heirs, and to our

(n) Mich. 15. E. 3. tit. Avowry 109.

IN this (n) Record theſe things are to be obſerved.

1. How neceſſary, and profitable Records and obſervations are, albeit they were not publiſhed in Print, for at the time when Littleton wrote this Record was not printed.

2. That the huſband and wife being homage, the huſband ſhall ſpeak the words for them both, viz. We do to you homage, &c.

3. That the homage whereby the huſband and wife do, is the very homage which the wife ſhould do alone, but this joint homage done by the huſband and wife, is intended to be before iſſue had between them, wherof more ſhall be ſaid hereafter. And it is to be obſerved, that very few caſes ruled or reſolved in the reign of

had been ruled or resolved in the Reigns of Edward the second, Edward the first, or before, as is implied, (a) warranting herof, vide Hill. 17. E. 2. Rot. Parl. &c.

(a) For like reasons as

Hill. 17. E. 2. Rot. Parl. &c.

nioꝛ le Roy, & a ſes heires, & a noſtre auters ſeignioꝛs: & lun & lauter luy baſerõt. Et puis ils fier fealtie, & lun & lauter tyendꝛont lour mains ſur un lieur, & le baron dit les paroꝛs, & ambꝛo baſeront le lieur.

other Lords, and both the one and the other kiſſed him. And after they did fealty, and both of them hold their hands upon the Book, and the Huſband ſaid the word, and both kiſſed the Book.

Sect. 89.

¶ *Les mes auters Seigniours.* This ſaving for other Lords is good for explanation albeit the homage is referred onely to the tenements which he holdeth of him to whom he doth the homage.

NOta ſi un home ad ſeveral tenancies queux il tient de ſeveral Seignioꝛs, ſ. cheſcun tenancy per homage, donque quant il fait hamage a un des ſeignioꝛs, il dirra en le fine de ſon homage fait, ſalve la foy que ſeo doy a noſtre ſeignioꝛ le Roy, & a mes auters ſeignioꝛs.

NOte if a man hath ſeveral tenancies which he holdeth of ſeveral Lords, that is to ſay, every tenancy by homage, then when he doth homage to one of his Lords, he ſhall ſay in the end of his homage done, ſaving the faith which I ow to our lord the King, and to my other Lords.

Sect. 90.

¶ EN droit dun auter. As the husband and wife in the right of his wife; the Bishop in right of his Bishoprick, &c. the Abbot or Prior in right of his Monastery, &c. But no corporation aggregate of many persons capable, be the same Ecclesiastical or Temporal, can do homage, as a Dean and Chapter, Mayor, and Commonalty; and such like, albeit they be seised in fee of lands holden by homage, yet shall not they do homage. And the reason is because that homage must be done in person, and a corporation aggregate of many cannot appear in person, for albeit the bodies natural whereupon the body Politique consists may be seen, yet the body Politique or corporate it self cannot be seen, nor do any act but by Attorney, and homage must ever be done in person, &c. And albeit an

43. H. 8. tit. fealty. Br. 15. Lib. 4. fol. 11. Lib. 7. fol. 10. Lib. 10. fol. 31.

NOta que nul ſerra homage, mes tiel que ad eſtate en fee ſimple, ou en fee taile, en ſon droit demeine, ou en droit dun auter. Car il eſt un Maxime en ley que il q̃ ad eſtate forſque pur terme de vie, ne ſerra homage, ne prendra homage. Car ſi feme ad terres ou tenements en fee ſimple, ou en fee taile, queux el tient de ſon Seignioꝛ per homage, & prent baron, & ont iſſue, donque le baron en la vie la feme ſerra homage,

NOte, none ſhall do homage but ſuch, as have an eſtate in fee ſimple, or fee taile in his own right, or in the right of another. For it is a maxime in law, that he which hath an eſtate but for term of life, ſhall neither do homage or take homage. For if a woman hath lands or tenements in fee ſimple or in fee taile which ſhe holdeth of her Lord by homage, and taketh husband, & have iſſue, then the husband in the life of the wife ſhall do ho-

put

pur ceo que il ad title daver les tenements per le curteſie Dengleterre (a) til ſurvelquiſt la feme, & aury il tient en droit de ſa feme. Mes ſi la feme deby devant homage fait per le baron en la vie ſa feme, & le baron ſi tient eins come tenant per le curteſie, donques il ne ſerra homage a ſon ſeignior, pur ceo que il adonque nad eſtate forſque pur terme de vie.

¶ Plus ſerra dit de homage & le tenure per Homage Auncеſtrel.

mage, becauſe he hath title to have the tenements by the curteſie of *Engl.* if he ſurviveth his wife, and alſo he holdeth in right of his wife, but if the wife dies before homage done by the huſband in the life of his wife & the huſband holdeth himſelf in as tenant by the curteſie then he ſhall not do homage to his Lord; becauſe he then hath an eſtate but for term of life.

¶ More ſhall be ſaid of homage in the tenure of homage anceſtrel.

Abbot or Covent is a corporation aggregate of many, yet becauſe the Covent are all head perſons in law, the Abbot alone in nature of a ſole Corporation ſhall do homage.

¶ *Un maxime en Ley.* A maxime is a propoſition, to be of all men confeſſed and granted without proof, argument, or diſcourſe, Contra negantem principia non eſt diſputandum. But of this ſomewhat hath been ſaid before.

¶ *Il que ad eſtate forſque pur terme de vie.* (q) A Parſon or Vicar of a Church that hath a qualified fee, (r) and yet to many intents upon the matter but but eſtate for life, can neither receive homage nor do homage as a Biſhop, an Abbot, or any ſuch like that hath a fee abſolute may. (f) So if a man and his wife ſeiſed in fee of a Seigniorie in the right of his wife, the huſband

(q) Glanvil.lib.9.cap.2. Britton fol. 170. Temps E.1.tit. Juris utrum 13.
(r) 8.E.4.28. 39.E.3.15. 3.E 3.Avowry 175.
(f) 2.E.2.avowrie 183. F.N.B.257. 13.E.3. gard.39.

ſhall not receive homage alone, but he and his wife together (t) But if the huſband in that caſe hath iſſue by his wife, then he ſhall receive homage alone during the life of his wife, and the reaſon is, becauſe he by having of iſſue is intitled to an eſtate for term of his own life, in his own right, and yet is ſeiſed in fee in the right of his wife, ſo as he is not a bare tenant for life. But if the wife die, then he hath only but an eſtate for life, and then he cannot receive homage. Yet tenant for life or years of a Seigniory (u) ſhall have ward, Marriage, and Reliefe, and ſhall ſuppoſe that the tenant died in the fealty of the Pl. (x) Fieri poſſunt homagia libero homini tam maſculo quàm fœminæ tam majori quàm minori, tam clerico quàm laico.

(t) 27. Aſſ.p.51. F.N.B. 257. 13.H.6.avowrie 21. 43.E.3.13.44.E.3.41. 3.E.3.avowrie 175. 13.E.3.2.gard.39. 22.E3.fol.19.gard.44.
(u) 6.E.2.gard.122. 13.E 3.gard.39. 22.E.3.gard.44.
(x) Glanvil.lib.9.cap.3. 18.E.3.7. 43.E.3.13. 44.E.3.41. 13.H.6.avowrie 21. 8.H.6.13.7.E.4.27. F.N.B.257.

¶ *Et ount iſſue, donque le baron en la vie la feme ſerra homage.* The reaſon hereof is rendred before, and alſo thereafter the death of his wife being but a bare tenant for life ſhall do no homage; for regularly it is true, that he that cannot receive homage in reſpect of the weakneſs of his eſtate in the Seigniory, ſhall not do homage if he hath a like eſtate in the tenancy.

If a man hold of the King and hath iſſue divers daughters, and dieth, the King ſhall have homage of every one of theſe Daughters. And this (a) appeareth by the ſtatute de Hibernia anno 14. H. 3. to be the common Law, for that Act ſaith, In regno noſtro Angliæ talis eſt lex & conſuetudo, quòd ſi quis tenuerit de nobis in capite, & habuerit filias hæredes ipſo patre defuncto, anteceſſores noſtri habuerunt & ſemper nos habuimus & cepimus homagium de omnibus hujuſmodi filiabus, & ſingulæ earum tenerent de nobis in capite in hoc caſu. And therefore where by the (b) Statute De prærogativa Regis, it is provided, Si una hæreditas, &c. that is but an affirmance of the common Law. (c) But this is to be underſtood where the coheirs be of full age, for if they be within age and in ward to the King, Primogenita tantum faciet homagium pro ſe & ſororibus ſuis, & aliæ ſorores cum ad ætatem pervenerint facient ſervitia Dominis feodorum per manum primogenitæ. (d) And therefore if a man holds of a common perſon by the ſervice of homage, and hath iſſue divers daughters and dieth, the eldeſt daughter only ſhall do homage for her and all her ſiſters. And this appeareth alſo by the ſtatute de Hibernia. Primogenita tantum faciet homagium Domino pro ſe & omnibus ſororibus ſuis. And the reaſon is there rendred afterward, Quia omnes ſorores ſunt quaſi unus hæres de una hæreditate. (e) But if the Coparceners in that caſe make partition, then every one ſhall do homage, becauſe now it is not Una ſed diverſa hæreditas. (f) And ſaith it if one make a feoffment in

(a) 14.H.3.tit.prærog.5.
(b) Prærog.Regis cap. 5.
(c) Statut. de homagio capiendo Temps E. 1.
(d) Glanvil.lib.7.cap.3. & lib 9.cap.2.Bract.lib.2 de homag.capiend. & lib.2.fol.78.80. Britton fol.168.b.171.172.Fleta lib.3.cap.16.& lib.2.cap. 60.& lib.5.cap.9. F.N.B.161.159.259. Stanf.prær.23.24.
(e) F.N.B.162. Vide 11.E.3.avowry 101.
(f) 45.E.3.23.24.E.3.73 Marlbridge cap.9. F.N.B.162.

fee (which is a partition in law for that part) the feoffee shall do homage, for every Tenant in common shall do several services. And it hath been adjudged (g) in our books, that if the eldest Coparcener do homage to the Lord, and afterward the younger sister maketh a feoffment in fee of her part, the Lord shall have homage for the part of the younger sister, for that which was una hæreditas, one Inheritance by law, by the alienation which is her act is (as hath been said) divided and become in gross, and the Coparcenary determed.

(g) 2.E.2.avowrie 179.

But if Tenant enfeoffe divers men in fee jointly, (h) all these joyntenants shall joyntly do their homage, and their fealty also. (i) If homage be due by the Tenant, and he maketh a feoffment in fee, the feoffee shall not do homage, because albeit he is supposed to be Tenant in some cases, quant il avowrie, yet the Feoffee is very Tenant, and homage shall always be done by the very Tenant, but that very Tenant needeth not to be very Tenant of the Land, and therefore the Mesne because he is very Tenant to the Lord Paramount (though he be not Tenant of the Land) shall do homage. And so it is of the Disseisee, and of Tenant in tail, after a feoffment in fee, for in that case the Donee is very Tenant to the Donor.

(h) 7.E.4.27.28. 14.H.4.38. 1.H.5. grant 43. 21.E.3.gard.116.

(i) 48.E.3.8.15.E.4.13. 5.E.4.3.

If a Tenant that holdeth by homage maketh a feoffement in fee of part, (k) that Feoffee shall do homage, and so shall every Feoffee of what part soever.

(k) 22.E.4.22.

If there be two Coparceners or Joyntenants of a Seignory, if the Tenant doth homage and fealty to one of them (l) he shall be excused against the other.

(l) 3.E.2.avowrie 187. 43.H.4.5. 13.R.2.avowrie 89. 8.H.3.tit.prescription. Hill.22.E.1. coram Rege Rot.43.

If homage be parcel of a tenure, it is presumption that the tenure is by Knights Service, unless the contrary be proved, but of it self it maketh not Knights service. And yet by custom the heir of him that holds by homage only may be in ward.

Where shall be said of homage in the title of Homage ancestrel.

Chap. 2. Fealtie. Sect. 91.

¶ Fealty in Frenchis is fealty, and is (a) derived of the latin word Fides or fidelitas.

(a) Bract.lib.2.fol.80. Britton regist. origin. 302. Mirror cap.2.de ferement & de fealt. Statut. de 17 E.2.tit. homage.

¶ *Et quant franktenant.* Every freeholder, except tenant in Frankalmoign shall do fealty. (b) And yet some that are not tenants of any freehold shall do fealty, as a tenant for years shall do Fealty. Bracton saith De nullo tenemento quod tenetur ad terminum, fit homagii, fit tamen inde fidelitas Sacramentum.

(b) Bracton lib.2.fol. 80.a. Brit.fo. 173. Fleta lib. 2.cap.16. Littleton fol.29. nu.132. 40.E.3.34.9.H.6.43. 10.H.6.13.5.H.5.12. 9.E.4.1. 21.E.4.29. 5.E.7.11.

¶ *Que a vous ſerra foial & loial, &c. & foy a vous portera des tenements que ieo claime a tener de vous, & que loyalment a vous, ſerra les cuſtomes & ſervices &c.*

¶ Fealty, idem eſt quod Fidelitas en Latin. Et quant franktenant ferra fealtie a ſon Seignior, il tiendra ſa maine dexter ſur un Lieur & dirra iſſint; ceo oyes vous mon Seignior, q̃ ieo a vous ſerra foyal & loyal, & foy a vous portera des tẽnẽts que ieo claim a tener d vous & que loyalment a vous ferra les cuſtomes & ſervices queux faire a vous doy as termes aſſignes, ſicome moy aide Dieu & ſes Saints, et baſera le Lieur. Mes il ne genuflera quant il fait Fealty, ne ſerra tiel humble reverence, come avant eſt dit en homage.

Fealty is the ſame that *fidelitas* is in latine. And when a freeholder doth fealty to his Lord, he ſhall hold his right hand upon a book, and ſhall ſay thus, Know ye this my Lord, that I ſhall be faithful and true unto you, and faith to you ſhall bear for the Lands which I claim to hold of you, and that I ſhall lawfully do to you the cuſtoms and ſervices which I ought to do at the terms aſſigned, ſo help me God and his Saints, and he ſhall kiſs the book. But he ſhall not kneel when he maketh his fealty, nor ſhall make ſuch humble reverence as is aforeſaid in homage.

(c) Fealtie is a part of homage, for all the words of Fealty are comprehended within homage, and therefore fealty is incident to homage. (c)Mirror cap.3. de ser.& de fealtie.

¶ *Si come moy aide dieu.* As homage is the more honourable service, so Fealtie is a service more sacred, because he is sworn thereunto. And the reason wherefore the Tenant is not sworn in doing his homage to his Lord is, for that no subject is sworn to another subject to become his man of life and member but to the King only, and that is called the oath of Allegeance or homagium ligeum. And those words for that purpose are omitted out of fealtie, which is to be done upon oath. And Littleton saith well (when a Freeholder doth Fealtie) (d) in the Fealtie of him that holdeth in Villenage differeth from the Fealtie of the Freeholder. For the Villein holding his right hand upon the book shall say thus to his Lord, Hear you my Lord A. that I A. B. from this day forward shall be to you true and faithful, and shall owe you Fealty for the Land that I hold of you in Villenage, and shall be justified by you in body and goods, so help me God, &c. as by the act appeareth. (d)Stat.de 17.E.2.tit. Homage in le abridgment.

Sect. 92.

ET graund diuersitie y ad p enter fealans de fealtie & de homage, car homage ne poit estre fait forsq; al sñr m: Mes le Seneschal de court de Sñr, ou Bailife, puit prender fealtie pur le Seignior.

AND there is great diversitie betwee the doing of fealty, and of homage; for homage cannot be done to any but to the Lord himself, but the steward of the Lords Court, or Bailiff may take fealtie for the Lord.

¶ Bracton lib.2.fol.80. saith thus; Sciendum est quod non per procuratores nec per literas fieri poterit homagium sed in propria persona, tam domini quam tenentis, capi debet et fieri. Bracton lib.2.fo.8. 21.E.4.19.acc.2.E.3.10. 32.H.6.23.lib.9.fo.76.

¶ *Mes le seneschal &c. ou Bailife poet prender fealtie.* This is so evident that it needeth no explanation. Vid. for the signification of Seneschal and Bailife Sect. 78.79.248. & 379.

Sect. 93.

ITem tenant a terme de vie fera fealtie, & uncore il ne ferra homage Et diuers autres diversities y sont perenter homage & fealty.

ALso tenant for term of life shall do fealtie and yet he shall not do Homage. And divers other diversities there be between homage & fealty.

¶ The Tenant must do fealtie in person, because he must be sworn unto it, and no man can swear by the Common Law by Attorney or Proctor. Lib.9.fol.76.

Sect. 94.

ITem home poit veir 15. E. 3. coment home & sa feme fieront homage & fealtie en common banke, que lest escript devant en Tenure de homage.

ALso a man may see in 15. E. 3. how a man and his wife shall do homage and fealty in the common place, which is written before in the tenure of Homage.

¶ This is evident & appears before, & if lords knew what benefit they may reap by receiving of homage & fealtie they would not neglect them, (e) for by the receiving of either of them, it is a sufficient seisin of all manner of services, as by the words (f) of either of them appeareth. Now if it be demanded what (e)Lib.4.fo.8.& 9. Bevils case 13.E.4.5. (f)Vid.Sect.118.130. 131.138.

what difference is between the oath of fealtie, when it is done to the King in reſpect of a tenure, and the oath which every Subject ought to take in reſpect of his allegeance, Littleton here ſetteth down the oath of Fealtie. Now the (g) Oath of Allegeance is thus, You ſhall ſweare, &c.

(g) Brit.ca.29. Calvins caſe li.7.fo.6.b. 12.H.7.18.

Plus ſerra dit de Fealtie en le tenure en Socage, & en le tenure en Frankalmoigne, & en le tenure per homage Auncestrel.

More ſhall be ſaid of Fealtie in the Tenure in Socage, and in Frankalmoigne, and in the tenure by homage Auncestrel.

Then it may be demanded, where and when is this oath to be taken, and it is anſwered, That whoſoever is above the age of twelve years, is to be ſworn in the Tourn, unleſs he be within ſome Leet, and then in the Leet: And I read amongſt the Laws of Saint Edward, Quod hanc Legem invenit Arthurus, qui quondam fuit inclitiſſimus Rex Britannorum, & ita conſolidavit & confœderavit Regnum Britanniæ univerſum ſemper in unum. Hujus legis authoritate expulit Arthurus prædictus Saracenos & inimicos à regno. Lex enim iſta diu ſopita fuit & ſepulta donec Eadgarus Rex Anglorum excitavit, & erexit in lucem, & illam per totum Regnum obſervari præcepit. Which Law in ſome manner is obſerved at this day. But to return to Littleton.

Lambert 135.

(a) Mir.ca.1.ſect.3. Brit.fo.162.&c. Ockam cap. Quid ſit ſcutagium.

(b) Bract.li.2.fo.36.2. Flet.li.3.ca.14. Ockam ubi ſupra. 27.Aſſ.52. 31.Aſſ.38.

(a) *Escuage.* (a) In Latine Scutagium (id eſt) Servitium ſcuti, Service of the Shield, hereby it appeareth that right interpretations and Etymologies are neceſſary: For, ad recte docendum oportet primũ inquirere nomina, quia rerum cognitio a nominibus rerum dependet.

Nomina ſi neſcis, perit cognitio rerum.

And herewith agreeth that which is ſaid, Primo excutienda eſt verbi vis ne ſermonis vitio obſtruetur oratio, ſive lex ſine argumentis.

Scutum in French is Escue and thereof cometh the Eſcuer, (i) Scutifer, which we uſually call Armiger, (b) Of this Bracton ſaith, Item ſcutagium dicitur quòd talis præſtatio pertinet ad ſcutum quòd aſſumitur & ſervitium militare. And Fleta ſaith, Sunt quædam ſervitia forinſeca, & dici poſſunt regalia quæ ad ſcutum præſtantur, & inde habemus ſcutagium, & ratione ſcuti pro feodo militari reputantur. And Ockam ſaith, Hæc itaque ſumma quia nomine ſcutorum ſolvitur, ſcutagium nuncupatur.

¶ Escuage eſt appell en Latine Scutagium, ceſtaſcauoir, Servitium Scuti. Et tiel tenant que tient ſa terre per Eſcuage, tient p ſervice de Chivaler. Et auxy il eſt communement dit, que aſcun tient per un fee & ſervice de Chivaler. Et aſcun per le moity dun fee de ſervice de chivaler, &c. Et il eſt dit, que quant le Roy face voyage royal en Eſcoce per ſubduer les Scotes, donqs il que tient per un fee de Service de chivaler, covient eſtr ove le Roy per 40. jours, diẽ & cõvenablement array pur le Guerre. Et celuy que tient ſa Terre per le

Escuage is called in Latin, *Scutagium*, that is, Service of the Shield; and that Tenant which holdeth his Land by Eſcuage, holdeth by Knights ſervice. And alſo it is commonly ſaid, That ſome hold by the ſervice of one Knights fee, and ſome by the half of a Knights Fee. And it is ſaid, That when the King makes a voyage royal into Scotland to ſubdue the Scots, then he which holdeth by the ſervice of one Knights Fee, ought to be with the King forty daies, well and conveniently arrayed for the War: and he which holdeth his Land by the moitie of a Knight

moity

moitie dun fee de chivaler covient eſte ove le Roy per 20. jours. Et il que tient ſon Terre per le quart part dun fee de chivaler covient eſte ove le Roy per 10. jours, & iſſint que pluis, pluis, & que meins, meins.

fee, ought to be with the King twenty days: and he which holdeth his land by the fourth part of a Knights fee, ought to be with the King ten days, and ſo he that hath more, more, and he that hath leſs, leſs.

(c) Et *tiel tenant que tient ſont terre per Eſcuage tient per ſervice de Chivaler.*

(c) Mirr cap. 1. ſect. 3.

(d) For as Fealty is incident to homage, ſo Homage and Knight ſervice be incident to Eſcuage, and by the grant of Services, eſcuage paſſeth with the reſt. Every tenure by Eſcuage is a tenure by Knights ſervice: but every Tenant that holdeth by Knights ſervice, holdeth not by Eſcuage, as ſhall be ſaid hereafter. But note here the wiſdom of Antiquity (e) Mavult enim Princeps domeſticos quam ſtipendiarios bellicis apponere caſibus, that is, to be ſerved in his wars by his own ſubiects, rather than by ſtipendary Forainers.

(d) 2. E. 3. 8. b. 19. E. 3. 2. vowry 294. 26. H. 8. 1. 2. 20. E. 3. per quæ ſervic. 11 43. E. 3. 22. F.N.B. 83. 84.

(e) Lib. rub.

¶ *Un fee de ſervice de Chivaler.* (f) There is great diverſity of opinions concerning the Contents of a Knights Fee, that is how much Land goeth to the livelyhood of a Knight; for ſome ſay that a Knights Fee conſiſteth of eight hides, and every hide containeth an hundred acres, and ſo a Knights fee ſhould contain 800. acres: others ſay that a Knights fee containeth 680. acres: others ſay that an oregang of Land containeth 15. acres, and eight oregangs make a plowland; by which account a plowland contains 120. acres, and that virgata terræ, or a yardland containeth 20. acres. But I hold that a Knights fee, an hide or plowland, a yardland or oregang of land do not contain any certain number of Acres. But a Knights fee is properly to be eſteemed according to the qualitie, and not according to the quantity of the land, that is to ſay by the value, and not by the content. And therefore it is very true which Maſter Camden in his Britannia pag. 136. ſaith, viz. Subſequenti ætate ex cenſu ut colligitur facti fuerunt equites, &c. And Antiquity thought that twenty pound land was ſufficient to maintain the degree of a Knight, as appeareth in the ancient Treatiſe De modo tenendi Parliamentum tempore Regis Edw: filii Regis Etheldri. Where it appeareth that comitatus (to wit) an Earledom, conſtat ex viginti feodis unius militis, quolibet feodo computato ad viginti libratas. Baronia conſtat ex 13. feodis, & tertia parte unius feodi militis ſecundum computationem prædictam; Unum feodum militis conſtat ad valentiam 20. l' which Antiquity I cite for that it concurreth with the act of Parliament, anno 1. E. 2. de militibus, by which act Cenſus militaris the ſtate of a Knight is meaſured by the value of xx pound per annum, and not by any certain content of acres; and with this agreeth the ſtatute of W. 1. cap. 35. and F.N.B. fol. 82. where twenty pound of land in Socage is put in Equipage of a Knights fee, and this is the moſt reaſonable eſtimate, for one acre may be better than many others, ſo as he which hath 680. or 800. acres of ſome barren land had not according to the ancient account a ſufficient revenue to maintain the degree of a Knight, and he which had a leſs number of acres of ſome land of the value of xx. pound per annum, had a ſufficient livelihood in thoſe daies for the maintenance of a Knight. So Antiquity thought that 400. marks of land per annum was a competent livelihood for a Baron, and 400. pound per annum ad ſuſtinendum nomen & onus of an Earle, and of late time 800 Marks per annum of a Marquels, and 800. pound per annum of a Duke, ſo that their yearly revenue was eſtimated by the value and not by the content. And one plowland, carucata terræ, or a hide of land, hida terræ, (which is all one) is not of any certain content, but as much as a plow can by courſe of husbandry plow in a year. And therewith agreeth Lambert verbo Hide. And a plowland may contain a meſſuage, wood, meadow, and paſture, becauſe that by them the plowmen and the cattel belonging to the plow are maintained. Vide Temps E. 1. tit. Brieſe 800. 4. E. 3. 47. Pl. Com. in Hill and Granges caſe, fol. 168. Vide 6. E. 3. fol. 42. and 39. H. 6. 8. 2. And venerable Beda calleth a Plowland familiam a family, becauſe it containeth neceſſary things for the maintenance of a family. And Priſot well ſaith in 35. H. 6. fol. 29. that a plow may till more land in a year in one Country than in another, and therefore it ſtands with reaſon, that a plowland ſhould be leſs in one place than in another. 41. E. 3. tit. fine 40. and 13. E. 3. fine 67. A fine ſhall not be received De una virgata terræ for the uncertainty, vide 39. H. 6. 8. But an acre of land is certain by the ſtatute De terris menſurandis. Note alſo (Reader) that every plowland of ancient time was of the yearly value of five nobles per annum, and this was the living of a plowman or Peaſant, and Ex duodecim carucatis conſtabat unum feodum militis, which amount to 20. pound per annum. And this you may ſee Termino paſch. anno 3. E. 1. Coram Rogero de Seyton & ſociis ſuis Juſticiariis apud

(f) Lib. 9. fol. 123. in Lowes caſe.

Vide Lib. 7. fol. 33. 34. Nevils caſe.

Weſtm.

Weſt. Ebor. Ro. 10. Radulphus de Normanville petens in brevi de medio querit ut contra Luciam de Kyme quod cum ipſa teneat de ipſo duas carectas terræ in Coningſton per homagium & ſervitium militare, unde duodecim carucatæ terræ faciunt unum feodum militis pro omni ſervitio, ipſa deſtrinxit ipſum ad faciendum ſectam ad curiam ſuam de Thorneton in Craven, &c.

And it is to be obſerved that the relief of a Knight and all above him which be noble, is the fourth part of their yearly revenue, as of a Knight five pound, which is the fourth part of 20. pound. So una baronia conſtat ex 13. feodis militum & de 1. parte unius feodi militis, which amount to 400. Marks, and therefore his relief is the fourth part of this, viz. 100. Marks: and an Earldom conſiſts of twenty Knights fees, which amount to 400. pound (as before it appeareth by the ſaid ancient Record De modo tenendi parliamentum, &c.) and therefore his relief is 100. pound. And this alſo appeareth by the ſtatute of Magna Charta cap. 2. and by the equity of this ſtatute, inſomuch as a Marquiſdom which conſiſts of the revenue of two Earldoms which amount to 800. Marks, ſhall pay according to that juſt proportion for his relief 200. marks; and likewiſe a Dukedom conſiſts of the revenues of two Earldoms, viz. 800. pound per annum, a Duke ſhall pay 200. for a relief, which is alſo the fourth part of his revenue, and with this agree the Records of the Exchequer.

Note (Reader) At the time of the making of the ſtatute of Magna Charta 5. 9. H. 3. there was not any Duke, Marqueſs or Viſcount in England (and therefore the ſtatute could not make mention of them) and Edward the eldeſt ſon of King E. 3. called the black Prince was the firſt Duke in England after the Conqueſt, and Robert Earle of Oxford in the reign of R. 2. was the firſt Marqueſs, Sic enim ordines Angliæ in ſua Britannia teſtatur Camden. ubi ſupra. Et titulus Marchionis ſerius ad nos devenit, nec ante R. 2. tempora cuiquam delatus. ille enim Robertum Vere Oxoniæ comitem delicias ſuas primum Marchionem Dubliniæ deſignavit, merumque erat honoris nomen. Hæc ille. And before the reign of H. 6. there was not any Viſcount. Sic enim idem Author ubi ſupra aſſerit. Poſt comites vicecomites ordine ſequuntur, Viſcounts nos vocamus; hæc vetus officii ſed nova dignitatis appellatio, & H. 6. tempore ad nos primum audita. Hæc ille, Et dominus de Bello monte was the firſt Viſcount created by King H 6. Vide Caſſianeum in gloria mundi parte 4. conſid. 55. that this dignity of a Viſcount is of great antiquity in other Realms.

7.H.4.9.31.Aſſ.30. 26.Aſſ.66.27.Aſſ.32. 8.E.3.154.

Bracton lib. 2. 36. Item ſunt quædam ſervitia quæ dicuntur forinſeca, quamvis ſunt in carta de feoffamentis expreſſa & nominata, & quæ ideo dici poſſunt forinſeca, quia pertinent ad dominum regem, & non ad dominum capitalem, niſi cum in propria perſona profectus fuerit in ſervitio, vel niſi cum pro ſervitio ſuo ſatisfecerit domino regi, &c.

7.E.3.29. 11.H.4.7. F.N.B.28.b.& 83.g. 3.H.4.16.28.H.6.1.b. 39.H.6.38. 6.R.2.protection 46. 19.R.2.gard. 165. 17.H.6.protect.56. 7.E.4.27. 11.H.4.7. 3.H.4.16.

¶ *Voyage Royal.* A voyage royal is not only when the King himſelf goeth to war as Littleton here ſaith, but alſo when his Lieutenant or Deputy of his Lieutenant. And what ſhall be ſaid a Voyage royal ſhall be adjudged in this caſe by the Judges of the Common Law as an incident to Eſcuage, and not by the Conſtable and Marſhal, or any other: & ſic de ſimilibus.

There is alſo another kind of Voyage royal, viz. when one goeth with the Kings daughter beyond ſea to be married, &c. for ſuch a Voyage is for the good of the whole Realm, (for more profit for the Realm cannot be then to make alliance with another Nation) but of this Voyage royal Littleton ſpeaketh not here, but only of the Voyage royal to warr: ſo as there is a Voyage royal of war, and a Voyage royal of peace and amity. And it is to be obſerved that he that holdeth by Caſtle gard or cornage holdeth by Knights ſervice, and yet he ſhall pay no Eſcuage, becauſe he holdeth not to go with the King to warr.

Lib.rub.in Scacc.47.48. 19.R.2.gard.95. 6.R.2.protection 46. 6.H.3.avowry 242. Vide Rot.clauſ.8 H.3.& Fin.8.H.3.& patent. 9.H.3.multi ſolverunt ſcutagium pro exercit.in Walliam.memb.30.& ante.clauſ.6.H.3. memb. 3.

¶ *En Eſcoce.* In Scotiam, this is put but for an example, for if the tenure be to go in Walliam, Hiberniam, Vaſconiam, Pictaviam, &c. it is all one. See an ancient Record Rot. de ſimibus Termino Mich. 11. E. 2. Sir Rich. Rockeſley Knight did hold lands at Seaton by Serjeanty to be Vantrarius Regis, that is to be the Kings foot-foot-man when the King went into Gaſcoigne, donec perusus fuit pari ſolearum precii 4. d. that is until he had worn out a pair of ſhoes of the price of four pence. And this ſervice being admitted to be performed when the King went to Gaſcoigne to make warr, is Knights ſervice.

¶ *Il que tient per un fee de ſervice de chivalier covient eſte ove le Roy per 40. jours.* But this is to be underſtood of a Tenant that holdeth of the King immediately, for every man is bound by his tenure to defend his Lord, and both he and his Lord the King and his Country; and therefore if the Lord goeth not, his Tenant is excuſed. But yet if the tenant peravaile goeth with the King, it excuſeth all the means.

Magna Charta cap.37. Fleta lib. cap.60.

And it is to be obſerved, that for every pound of the ancient value of a Knights fee accounting twenty pound land, the Tenant muſt go with the King two dates, which cometh juſt to 40. dates for a whole Knights fee, by the ſtatute of Magna Charta it is provided that Scutagium de cæter' capiatur ſicut capi conſuevit tempore Hen. regis avi noſtri.

Sect.

Sect. 96.

MEs il appiert p̄ les plees & arguments faits en un bon plee ſur briefe de Detinue de un eſcript Obligatorie port per un H. Gray T. 7. E. 3. que ne beſoigne a celuy q̄ tient per Eſcuage de aler ove le Roy luy meſm̄, ſil voile trover un auter perſon able pur luy convenablement array pur le guerre de aler ove le Roy Et ceo ſemble eſtre bon reaſon, car poit eſtre q̄ celuy que tient per tiels ſerbices eſt languiſhant, iſſint q̄ il ne poit aler ne chivaucher. Et auxy un Abbe, ou auter home de Religion, ou feme ſole q̄ tient per tiels ſerbices, ne doit en tiel cas aler en proper perſon. Et Sir W. Herle, adonque chiefe Juſtice a common bank. diſoit en tiel plee, que eſcuage ne ſerra graunt, mes lou le Roy alaſt luy meſme en ſon proper perſon. Et fuiſt demurre en judgement en meſme le plee, le quel les xl. jours ſerront accompts de le primer jour del mu-

But it appeareth by the pleas and arguments made in a plea upon a Writ of detinue of a writing obligatorie brought by one *H. Gray, T. 7. E. 3.* that it is not needful for him which holdeth by Eſcuage to go himſelf with the King if he will find another able perſon for him conveniently arrayed for the warr to go with the King. And this ſeemeth to be good reaſon. For it may be that he which holdeth by ſuch ſervices is languiſhing, ſo as he can neither go nor ride. And alſo an Abbot or other man of Religion, or a feme ſole, which hold by ſuch ſervices ought not in ſuch caſe to go in proper perſon. And Sir *William Herle* then chief Juſtice of the common place ſaid in this plea, that Eſcuage ſhall not be granted but where the King goes himſelf in his proper perſon. And it was demured in judgment in the ſame plea, whether the 40. days ſhould be accounted from the firſt day of

TR. 7. E. 3. &c. This is the firſt book at large that our Author hath cited and it is to be obſerved that this point is not debated in the ſaid book, but only it is there admitted, & yet is good authority in law, for our Author ſaith that it appeareth by this book, now both by Littleton himſelf, and by the book of 7. E. 3. it is apparent that albeit the tenure is that he which holdeth by a whole Knights fee, ought to be with the King, &c. to do a corporal ſervice, yet he may find another able man to do it for him. T. 7. E. 3. fol. 29.

By the Statute of Magna Charta, cap. 20. it is provided that no Knight that holdeth by Caſtle-gard ſhall be diſtreyned to give mony for the keeping of the Caſtle, Si ipſe eam facere voluerit in propria perſona ſua vel per alium probum hominem faciet ſi ipſe eam facere non poſſit propter rationabilem cauſam.

Some have thought that he that holds by eſcuage is taken by the equity of this ſtatute that ſpeaketh only of Caſtle-gard, but it is holden that this ſtatute is but an affirmance of the common law. For where that Act ſaith, (propter rationabilem cauſam) that reaſonable cauſe is referred to the Tenants own diſcretion and choice, and the cauſe is not material or iſſuable no more than in the caſe that Littleton here putteth as hereafter appeareth. And I would adviſe our ſtudent, that when he ſhall be enabled and armed to ſet upon the year books, or reports of Law, that he be furniſhed with all the whole courſe of the Law that when he heareth a caſe vouched and applyed either in Weſtminſter Hall (where it is neceſſary for him to be a diligent hearer, and obſerver of caſes of law) or at readings or other exerciſes of learning, he may find out and read the caſe ſo vouched,

ther, for that will both fasten it in his memory, and be to him as good as an exposition of that case, but that must not hinder his timely & orderly reading, which (all excuses set apart) he must bind himself unto, for there be two things to be avoided by him, as enemies to learning, præpostera lectio, and præpropera praxis. But let us now hear what our Author will say.

ster de hoſt le Roy, fait per les Commons, & per commãdement le Roy, ou de la jour que le Roy primes entra en Escoce: Ideo Quære de hoc.

the muster of the kings host made by the Commons, and by the Commandement of the King, or from the day that the King first entred into *Scotland*. Therefore inquire of this.

¶ *Et ceo ſemble bone reaſon, &c.* Here Littleton sheweth three reasons wherefore the Tenant should not be constrained to do his service in person.

First, It may be the tenant is sick, so as he is neither able to go nor ride. And ever such construction must be made in matters concerning the defence of the Realm or common good, as the same may be effected and performed. To the former disability may be added where a Corporation aggregate of many, as Dean and Chapter, Major and Communalty, &c. or an Infant being a Purchaser, for these also must find an able man. But it may be objected that in these particular Cases the Tenant might find a man, but not when he himself is able without all excuse or impediment. To this it is answered, that Sapiens incipit à fine. And the end of this service is for defence of the Realm, and so it be done by an able and sufficient man, the end is effected.

Secondly, Seeing there are so many just excuses of the Tenant, it were dangerous, and tending to the hindrance of the service, if these excuses should be issuable, Multa in jure communi contra rationem disputandi pro communi utilitate introducta sunt.

Lastly, both Littleton and the Book in the seventh of Edward the Third, giveth the Tenant power, without any cause to be shewed to find an able and sufficient man, and oftentimes Jura publica ex privato promiscue decidi non debet.

¶ *Un Abbe ou auter home de religion.* Note that if the King had given Lands to an Abbot and his Successors to hold by Knights service this had been good, and the Abbot should do homage and find a man, &c. or pay Escuage, but there was no wardship or relief or other incident belonging thereunto. And though the Law saith that this was a Mortmain, that is, they held fast their Inheritances, yet if the Abbot with the assent of his Covent, had conveyed the land to a natural man and his heirs, now wardship and Relief and other incidents belonged of common right to the tenure. And so it is, if the King give Lands to a Major and Communalty, and their Successors to be holden by Knights Service. In this case the Patentees (as hath been said) shall do no homage, neither shall there be any Wardship or relief, only they also shall find a man, &c. or pay Escuage. But if they convey over the lands to any natural man and his heirs, now homage, ward, marriage and relief, and other incidents belonging hereunto. And yet this possibility was remota potentia, but the reason hereof is, Cessante ratione legis cessat ipsa lex, the reason of the immunity was in respect of the body politick, which by the conveyance ever ceaseth, which is worthy of observation.

And it is to be observed, that every Bishop in England hath a Baronie, and that Barony is holden of the King in Capite, and yet the King can neither have wardship or Relief.

If two Joyntenants be of Land holden by Knights service, if one goeth with the King, it sufficeth for both, and both of them cannot be compelled to go, for by their tenure one man is only to go.

6.H.3. Avowry 242. F.N.B. 83.84.

If the Tenant prevaile goeth, it dischargeth the Meine, for one Tenancy shall pay but one Escuage.

¶ *Ou auter home de Religion.* Here this word (Religion) is taken largely, viz. not only for regular, or dead persons, Abbots, Monks, or the like; but for secular persons also, as Bishops, Parsons, Vicars, and the like, for neither of them are bound to go in proper person. For Nemo militans Deo implicet' ſecularibus negotiis.

¶ *Languiſhant.* So it may be said of an Idiot, a mad Man, a Leper, a man maimed, blind, deaf, of decrepit age, or the like.

¶ *Ou fem ſole.* Seeing that a fem sole, that cannot perform Knights service may serve by depury, it may be demanded wherefore an heir male being within the age of 21. years

years may not serve also by Deputy, being not able to serve himself.

To this it is answered, that in cases of Minority, all is one to both sexes, viz. if the heir male be at the death of the Ancestor under the age of one twenty, or the heir female under the age of 14. they can make no Deputy, but the Lord shall have wardship as an incident to the tenure: therefore Littleton is here to be understood of a feme sole of full age, and seised of land holden by Knights service either by purchase or descent.

¶ *Covenablement arraie pur le guerre.* So as here are four things to be observed.

First, (as hath been said) that he may find another.

Secondly, That he that is found must be an able person.

Thirdly, He must be armed at the costs and charge of the Tenant, and herein is to be noted, Quod non definitur in jure, with what manner of Armor the souldier shall be arrayed with, for time, place, and occasion do alter the manner and kind of the Armour.

Fourthly, he must have such Armor, as shall be necessary, and so appointed in readiness.

Ferdwit is a Saxon word & significat quietanciam murdri in exercitu. Worscot is an old English word and signifieth Liberum esse de oneribus armorum. Fleta lib.1.cap.42.

It is truly said, Quod miles hæc tria curare debet, corpus ut validissimum & pernicissimum habeat, arma apta ad subita imperia, cætera Deo, & Imperatori curæ esse. Livius.

Sapiens non semper it uno gradu, sed una via, non semper statat sed aptat. Qui secundos optat eventus, dimicet arte non casu. In omni conflictu non tam prodest multitudo quam virtus. Vegetius.

Est optimi ducis scire & vincere, & cedere prudenter tempori. Multum potest in rebus humanis occasio, plurimum in bellicis. Polibius.

Quid tam necessarium est quam tenere semper arma quibus tectus esse possis. But I will take my leave of these excellent Authors of Art Military, and refer them to those that profess the same, and will return to Littleton. Vegetius.

¶ *Muster.* I find this word in the statute of 18. H. 6. cap 19. and the Ancient Military Order is worthy of observation, for before and long after that statute, when the King was to be served with souldiers for his war, a Knight or Esquire of the county, that had Revenues, Farmors and Tenants would covenant with the King by Indenture inrolled in the Exchequer to serve the King for such a terme with so many men (specially named in a list) in his war, &c. an excellent institution that they should serve under him whom they knew and honoured, and with whom they must live at their return, these men being mustered before the Kings Commissioners, and receiving any part of their wages, and their names so recorded, if they after departed from their captain within the Term, contrary to the form of that statute, it was Felony. But now that statute is of no force, because that ancient and excellent form of Military course is altogether antiquated: but later statutes have provided for that mischief. Lib.6.fol.27.the souldiers case.

To muster is to make a shew of souldiers well armed and trained before the Kings Commissioners in some open field. Ubi se ostendentes præludunt prælio. In Latine it is censere, seu lustrare exercitum.

By the law before the conquest Musters and shewing of Armour should be Uno eodem die per universum regnum, ne aliqui possint arma familiaribus & notis accommodare, nec ipsi illa mutuo accipere, ac justitiam Domini Regis defraudare, & Dominum Regem & Regnum offendere. Lamb.fol 135.b.

Concerning the point in law, demurred in Judgment, in the seventh of Edward the third, here mentioned by our Author: The law accounteth the beginning of the forty days after the King entreth into the Forrein Nation, for then the war beginneth, and till he come there, he and his host are said to go towards the war, and no Military service is to be done, till the King and his Host come thither.

¶ *Sir William Herle.* A Famous lawyer constituted chief Justice of the common Pleas by letters Patents dated, 2. die Martii anno 5. E. 3. It appeareth by Littleton, and by the Records that he was a Knight against the conceit of those, that think, that the chief Justices of the Court of common Pleas were not Knighted till long after.

Our student shall observe that the Knowledge of the law is like a deep well out of which each man draweth according to the strength of his Understanding. He that reacheth deepest, he seeth the amiable, and admirable secrets of the law, wherein, I assure you, the Sages of the law in former Times, (whereof Sir William Herle was a principal one) hath had the deepest reach. And as the bucket in the depth is easily drawn to the uppermost part of the water, (for Nullum elementum in suo proprio loco est grave) but take it from the water, it cannot be drawn up but with a great difficulty. So albeit beginnings of this study seem difficult, yet when the Professor of the law can dive into the depth, it is delightful, easie, and without any heavy burthen, so long as he keep himself in his own proper element.

¶ *Justice*

Glanvile lib.2.cap.6.&c.

¶ *Juſtice.* In Glanvil he is called Juſtitia in ipſo abſtracto, as it were Juſtice it ſelf which appellation remains ſtill in Engliſh and French, to put them in mind of their Duty and Function. But now in legal Latin they are called Juſticiarii tanquam juſti in concreto, and they are called Juſticiarii de Banco, &c. and never Judices de Banco, &c.

¶ *Comon Banke.* Banke is a Saxon word, and ſignifieth a Bench or high ſeat, or a Tribunal, and is properly applied to the Juſtices of the court of common Pleas, becauſe the Juſtices of that court ſet there as in a certain place: for all writs returnable into that court are Coram Juſticiariis noſtris apud Weſtmon. or any other certain place where the court ſet, and legal Records tearm them Juſticiarii de Banco. But writs returnable into the court called the Kings bench, are Coram nobis (i. e. Rege) ubicunque fuerimus in Anglia. And all judicial Records there are ſtiled coram Rege. But for diſtinction ſake it is called the Kings bench, both becauſe the Records of that court are ſtiled (as hath been ſaid) Coram Rege, and becauſe Kings in former times have often perſonally ſet there. For the Antiquity of the court of common Pleas they err, that hold that before the ſtatute of Magna Charta there was no court of common Pleas, but had his creation by, or after that charter: for the learned know, that in the ſix and twentieth year of Edward the Third, the Abbot of B. in a writ of Aſſize brought before the Juſtices in Eire claimed conuſance and to have writs of Aſſize, and other original writs out of the Kings court by preſcription, time out of mind of man, in the Raigns of Saint Edmond, and Saint Edward the confeſſor before the conqueſt. And on the behalf of the Abbot were ſhewed divers allowances therof in former times in the Kings courts, and that King Henry the Firſt confirmed their Uſages, and that they ſhould have conuſance of Pleas, ſo that the Juſtices of the one bench, or the other ſhould not intermeddle. And the ſtatute of Magna Charta, erecteth no court, but giveth direction for the proper Juriſdiction therof in theſe words. Communia Placita non ſequantur Curiam noſtram, ſed teneantur in aliquo certo loco. And properly the ſtatute ſaith, non ſequantur, for that the Kings bench did in thoſe dayes follow the King ubicunque fuerit in Anglia, and therefore enacteth that common Pleas ſhould be holden in a court reſident in a certain place. In the next chapter of Magna Charta (made at one and the ſame time) it is provided: Et ea quæ per eoſdem (s. Juſticiarios itineantes) propter difficultatem aliquorum articulorum terminari non poſſunt, referantur ad Juſticiarios noſtros de Banco, & ibi terminentur. And in the next to that, Aſſiſæ de ultima præſentatione ſemper capiantur coram Juſticiariis de Banco, & ibi terminentur. Therefore it manifeſtly appeareth, that at the making of the ſtatute of Magna Charta there were Juſticiarii de Banco, which all men confeſs to be the court of common Pleas. And therefore that court was not erected by or after that ſtatute. For the Authority of this court it is evident by that which hath been ſaid, that it hath Juriſdiction of all common Pleas. But let us return to Littleton.

26.Aſſ.p.84.4.E.3.fo.19.
Bracton lib.3.fol.105.b.
Britton fol.1.& 2.
Fleta lib.2.cap.2.
Mirror.cap.5.ſect.1.
Forteſcue cap.51.
See in the Preface to the third part of my Reports.

Mirror cap.5.ſect.2.
Fleta lib.2.cap.54.

¶ *Demurre en Judgement.* A Demurrer commeth of the Latine word demorari to abide, and therefore he which demurreth in law, is ſaid, he that abideth in law, Moratur, or demoratur in lege. Whenſoever the counſel learned of the party is of Opinion, that the count or Plea, of the adverſe party is inſufficient in law, then he demurreth or abideth in law, and refereth the ſame to the Judgment of the court, and therefore well ſaith Littleton hath demurre en Judgement, the words of a Demurrer being Quia narratio, &c. materiaque in eadem contenta minus ſufficiens in lege exiſtit, &c. and ſo of a Plea, Quia Placitum, &c. materiaque in eodem contenta minus ſufficiens in lege exiſtit, &c. unde pro defectu ſufficientis narrationis ſive placiti, &c. petit judicium, &c. But if the Plea be ſufficient in law, and the matter of Fact be falſe, then the adverſe party taketh iſſue thereupon, and that is tryed by a Jury, for matters in law are decided by the Judges, and matters in Fact by Juries, as elſewhere is ſaid more at large.

Now as there is no iſſue upon the Fact, but when it is joyned between the parties, ſo there is no Demurrer in law, but when it is joyned, and therefore when a Demurrer is offered by the one party as is aforeſaid, the adverſe party joyneth with him, (for example) ſaith, Quod Placitum prædictum, &c. materiaque in eodem contenta bonum & ſufficiens in lege exiſtunt, &c. & petit judicium, and thereupon the Demurrer is ſaid to be joyned, and then the caſe is argued by counſel learned of both ſides, and if the poynts be difficult, then it is argued openly by the Judges of that court, and if they or the greater part concur in opinion, accordingly Judgement is given, and if the court be equally divided, or conceive great doubt of the caſe, then may they adiourn it into the Exchequer chamber, where the caſe ſhall be argued by all the Judges of England, where if the Judges ſhall be equally divided, then (if none of them change their opinion) it ſhall be decided at the next Parliament by a Prelate, two Earles, and two barons which ſhall have power and commiſſion of the King in that behalf, and by advice of themſelves, the Chancellor, Treaſurer, the Juſtices of the

Vid.Bract.lib.5.fo.352.b

14.E.3.cap.5.Statut.1.

the one bench and the other, and other of the Kings councel, as many and such as shall seem convenient, shall make a good Judgment, &c. And if the difficulty be so great as they cannot determine it, then it shall be determined by the Lords in the Upper house of Parliament. See the statute, for it extends not only to the case aboveiaid, but also where Judgments are delayed in the Chancery, Kings bench, common bench, and the Exchequer, the Justices assigned, and other Justices of Oyer and Terminer, sometime by difficulty, sometime by divers opinions of Justices, and sometime for other causes. (a) Before which statute, if Judgments were not given by reason of difficulty, the doubt was decided at the next Parliament, (which then was to be holden once every year at the least.) (b) Si autem talia nunquam prius evenerint, & obscurum & difficile sit eorum judicium, tunc ponatur judicium in respectum usque ad magnam curiam, ubi per concilium curiæ terminentur. But hereof thus much shall suffice. (c) He that demurreth in law confesseth all such matters of Fact as are well and sufficiently pleaded. If there be a Demurrer for part and no issue for part, the more orderly course is to give Judgment upon the Demurrer first, but yet it is in the discretion of the court to try the issue first if they will. After Demurrer joyned in any court of Record, the Judges shall give Judgment according as the very Right of the cause and matter in law shall appear, without due regarding any want of form in any writ, Return, Plaint, Declaration, or other pleading, Process, or course of proceeding, except those only which the party demurring shall specially and particularly set down and express in his Demurrer. (a) Now what is substance and what is form you shall read in my Reports.

Rot.Parl.14.E.3.num.13 a proceeding in Sir John Stantons case upon difficulty in the Court of Common Pleas. Vide Britton fol.41. 21.E.3.37.38. 39.E.3.fo.1.21.35. 40.E.3.34.12.H.4.3.4. (a) 4.E.2.ca.14. (b) Bracton lib.3.tract.2.cap.nu.7.Brit.fol.41. 1.E.3.7.8.2.E.2.6.7. (c) 17.E.3.50.b. 47.E.3.12.14.5.H.7.7. 13.E.4.7.b.Pl.Com.85. 411.172. 48.E.2.15.2.R.2.inquest 2. 38.E.3.25.11.H.4.5. 75.3.E.4.2.

(a) Lib.3.fol.57. Linc.Coll.case. Lib.5.fol.74.Wymeks case. Lib.10.fol.88. usque 98. Doctor Leyfields case.

And in some cases a man shall alledge special matter, and conclude with a Demurrer, (b) as in an Action of Trespass brought by I. S. for the taking of his horse, the Defendant pleads that he himself was possessed of the horse until he was by one I. S. dispossessed, who gave him to the Plaintiff, &c. the Plaintiff saith that I. S. named in the bar, and I. S. the Plaintiff were all one person, and not divers; and to the Plea pleaded by the Defendant in the manner, he demurred in law, and the court did hold the Plea and Demurrer good, for without the matter alledged he could not demur. Now as there may be a Demurrer upon counts and pleas, so there may be of Aid prier, Voucher, Receit, waging of law, and the like. (c) By that which hath been said it appeareth, that there is a general Demurrer, that is, shewing no cause, and a special demurrer which sheweth the cause of his demurrer. Also by that which hath been said, there is a demurrer upon pleading, &c. and there is also a demurrer upon evidence. (d) As if the Plaintiff in evidence shew any matter of Record, or Deeds or writings, or any sentence in the Ecclesiastical court, or other matter of evidence by testimony of witnesses, or otherwise, whereupon doubt in law ariseth, and the Defendant offer to demur in law thereupon, the Plaintiff cannot refuse to joyn in demurrer no more than in a demurrer upon a count, Replication, &c. and so E converso, may the Plaintiff demur in law upon the evidence of the Defendant.

(b) 13.E.4.7. 21.E.3.estoppel.244. 33.H.6.9.10. 22.E.4.50. 1.H.7.21.

(c) 14.H.4.31.37.H.6.67.

(d) Lib.5.fol.104.a. Bakers case.

But if evidence for the King in an Information or any other suit be given, and the Defendant offer to demur in law upon the Evidence, the Kings councel shall not be inforced to joyn in Demurrer: but in that case, the court may direct the Jury to find the special matter.

(c) 38.H.8.Dyer 53.

¶ *En Judgement.* For the signification of this word, Vide Sect. 366.

Sect. 97.

¶ ET apres tiel voyage royal en Escoce, il est communement dit, que p authoritie de Parliament lescuage serra assesse & mis en certaine, s. certeine sume dargent, quant chescun que tient per entier fee de service de chivaler, q̃ne suit

AND after such a voyage royal into *Scotland*, it is commonly said, that by Authority of Parliament, the Escuage shall be assessed and put in certein, s. a certain sum of money; how much every one which holdeth by a whole Knights fee,

¶ *Apres voiage royal, &c. il est communement dit, que per Authority de Parliament Escuage serra assesse.* Nota, here is a secret of law included, that albeit Escuage incertain be due by Tenure; yet because the Assessment thereof concerned so many and so great a number of the Subjects of the Realm, it could not be assessed by the King or any other but by Parliament;

(a) and

(a) 13.H.4.5.

(a) and this was by the common law.

(b) 8.H.3.Rot.Claus.& Rot.finium.memb.30. & ante.

(b) No Escuage was assessed by Parliament since the Reign of Edward the second, and in the eighth year of his Reign Escuage was assessed.

Stat.p.14.E.1.de banco.

If the Tenant goeth with the King, and dyeth in exercitu, in the Host or Army, he is excused by law, and no Escuage shall be demanded.

F.N.B.84.

And it is to be observed, that if he that holds of the King by Escuage, goeth, or findeth another to go for him with the King, &c. then he shall have Escuage of his Tenants that hold of him by such service, which must be assessed by Parliament.

Bract.lib.2.36.2.

F.N.B.84.

But if the Kings Tenant goeth not with the King, then he shall pay for his default Escuage, and shall have no Escuage of his Tenants. Richard the Second making a Voyage Royal into Scotland, at the Petition of his commons pardoned the payment of Escuage.

Rot.Parl.9.R.2.nu.40.

per luy meisme, ne per un auter pur luy ove le Roy, paiera a son Seignior de que il tient la Terre per escuage. Sicome mittomus, que il fuit ordaine per Authoritie de la Parliament, que chescun que tient per entire fee a Service de chivaler, que ne fuit ove le Roy, payera a son Seignior 40. s. donque celuy que tient per moitie dun fee de chivaler ne payera a son seignior forsq; xx. s. & celuy que tient a la quart part de fee de chivaler ne payera forsque x. s. & sic que pluis, pluis, & que meins, meins.

who was neither by himself nor by any other, with the King, shall pay to his Lord of whom he holds his Land by Escuage. As put the case that it was ordained by the Authority of the Parliament, That every one which holdeth by a whole Knights fee, who was not with the King, shall pay to his Lord forty shillings; then he which holdeth by the moity of a Knights fee, shall pay to his Lord but twenty shillings, and he which holdeth by the fourth part of a Knights fee, shall pay but x. s. and he which hath more, more, and which less, less.

Sect. 98.

¶ A *Scuns teignont per custome, &c.* Nota, that escuage is directed by custom.

Vide Sect.120.

¶ *Mes autrement est de Escuage certaine.* Here it appeareth, that Escuage is twofold, viz. Escuage Incertain, whereof Litt. here speaks; & Escuage certain, quèadmodũ incertitudo scutagii facit servitiũ militare, ita certitudo scu-

¶ ET ascuns teignont per la custome que si lescuage courge per authoritie de Parliament a ascun summe de money, que ils ne paieront forsque la moitie de ceo, & ascuns teignont que ils ne payeront forsque le quart part de ceo. Mes pur ceo que lescuage que ils paieront est non certaine per ceo que nest certaine coment le Parliament

And some hold by the custom, That if Escuage be assessed by authority of Parliament at any sum of mony, that they shall pay but the moity of that sum, and some but the fourth part of that sum. But because the Escuage that they should pay is uncertain, for that it is not certain how the Parliament will assess the Escuage, they hold by Knights ser-

assessera

15.E.2.tit.Avow.215. 26.Ass.65. 30.E.3.23.b. Lib.4.fol.88.in Luttrels Case.

assessera lescuage eux teign ont per service de Chivaler. Mes autrement est de lescuage certain, de que serra parle en le tenure de socage.

vice. But otherwise it is of Escuage certain, of which shall be spoken in the tenure of Socage.

tagii facit Socagium. But more of this in the Chapter of Socage, Sect. 120.

¶ *Per Parliament.* Of the Antiquity and Authority of this court, see Sect. 160.

Sect. 99.

ET si hõe parle generalment descuage, il serra entendue per ꝑ common parlance descuage noncertaine, que est service de chivaler, ꝙ tiel escuage trait a luy homage, ꝙ homage trait a luy Fealtie, car fealtie est incident a chescun manner de service forque a le Tenure en Frankalmoigne, come serra dit apres en le Tenure de Frankalmoigne. Et issint il que tient per Escuage, tient ꝑ homage fealtie ꝙ Escuage.

AND if one speak generally of Escuage, it shall be intended by the common speech of Escuage incertain, which is Knights service: And such Escuage draweth to it Homage, & Homage draweth to it fealtie; for Fealtie is incident to every manar of service, unlesse it be to the Tenure in Frankalmoign, as shall be said afterward in the Tenure of Frankalmoigne. And so he which holdeth by Escuage, holds by Homage, Fealty and Escuage.

¶ *ET si home parle generalment descuage il serra intend per le common parlance descuage non certain*

Verba æquivoca & in dubio posita intelliguntur in digniori & potentiori sensu. Tenure in capite ex vi termini is a Tenure in Gross, and it may be holden of a subject, but being spoken generally, it is secundum excellentiam, intended of the King, for he is Caput Reipublicæ.

Entendments en Ley Sect.100.110.367.377. 393.406.462.463. 5.E.2.Resc.165.20.H.6.23 21.H.2.8.37.H.29. 13.H.4.4.6.El.Dyer.236 10.E.4.11. 32.E.3. Gard.31.

Brit.fo.165.

¶ *Et tiel escuage trait a luy homage, & homage trait a luy Fealty, car Fealty est incident a chescun manner de service forsque a tenure en Frankalmoigne.*

40.E.3.21. 8.H.7.4.

Sect. 100.

This is gathered by the effects of their Tenure, for essences are found out by properties, fountains by Rivers, and causes by effects: for amongst others, the Lord shall have Escuage. Of their Tenants, &c. as it followeth:

ET est acaboire, Que quant escuage est tielmẽt, assesse per authoritie de Parliament chescun Seignior de que le terre est tenus per Escuage, abera lescuage issint assesse per Parliament pur ceo ꝙ il est in-

AND it is to be understood, that when Escuage is so assessed by Authority of Parliament, every Lord of whom the Land is holden by Escuage, shall have the Escuage so assessed by Parliament, because it is intended by the Law, That at

¶ tendus

tendus p la ley, q̃ al cõmencemẽt tiels tenemẽts fuer dones p les ſũrs a lez tenants de tener per tielx ſerbices a Defender lour ſũrs, auxy bien come le Roy, & mitter en quiet lour ſũrs & le Roy, de les ſcotes avandits.

the beginning ſuch tenements were given by the Lords to the tenants to hold by ſuch ſervices to defend their Lords aſwel as the King, and to put in quiet their Lords and the King from the Scots aforeſaid.

Sect. 101.

F.N.B.84. Regiſter.88. de Scutagio habend.

¶ *Les ſeigniours averont leſcuage, &c.* This is evident.

¶ *Briefe le roy.* This cometh of the Latine word Breve.

Fitzh. in his Preface to his N. B. ſaith of them, that they be thoſe foundations whereupon the whole law doth depend.

(a) Bracton lib. 5. fol. 413 Fleta lib. 2. cap. 12. Britton fol. 122. 227.

(a) Bracton deſcribeth a writ thus, Breve quidem cum ſit formatum ad ſimilitudinem regulæ juris, quia breviter & paucis verbis intentionem proferentis exponit & explanat ſicut regula juris rem quæ eſt breviter enarrat, non tamen ita breve eſſe debeat quin rationem & vim intentionis contineat.

Of writs ſome be original, brevia originalia, and ſome be judicial, brevia judicialia.

Also of Originals, quædam ſunt formata ſub ſuis caſibus & de curſu, & de communi conſilio totius regni conceſſa & approbata, quæ quidem nullatenus mutari poterint abſque conſenſu & voluntate eorum; & quædam ſunt Magiſtralia, & ſæpe variantur ſecundum varietatem caſuſuum, factorum & querelarum, as for example, Actions upon the caſe which vary according to the variety of every mans caſe, and the like, and theſe being not of courſe, the Maſters being learned men did make: Item brevium originalium alia ſunt realia, alia perſonalia, alia mixta. Item brevium originalium, alia ſunt patentia ſive aperta, & alia clauſa. Certain it is that the original writs are ſo artificially and briefly compiled, as there is nothing redundant or wanting in them, of which an honourable Secretary of ſtate once ſaid, that it was not poſſible to comprehend ſo much matter, ſo perſpicuouſly in fewer words: Of all theſe kinds of writs you ſhall read plentifully in the regiſter whereof Littleton maketh mention in this place, and alſo in Fitz N. B.

¶ *Sicome appiert per le Regiſter.* Regiſter, is the name of a moſt Ancient book and of great Authority in law, containing all the original writs of the common law, of which book ſee more in the Preface to the ninth part of my Reports, and containeth alſo Brevia judicialia quæ ſæpius variantur ſecundum varietatem placitorum proponentis & reſpondentis.

Bracton ubi ſupra. Britton ubi ſupra. Regiſt. 88. F.N.B.84.

Alſo it appeareth by the Regiſter that the King ſhall have eſcuage of his tenants which hold of him as of a Mannor which he hath in ward, or by reaſon of a vacation of a Biſhoprick.

F.N.B.84.

And ſo ſhall a common perſon, if he hath an eſtate for life or for years of a Seignory.

Section

¶ ET pur ceo que tiels tenemẽts devendront primes des Seignioꝛs, il eſt reaſon q̃ ils averont leſcuage de lour Tenants. Et les Seignioꝛs ẽ tiel caſe purront diſtreiñ pur leſcuage iſſint aſſeſſe, ou ils en aſcuns caſes purront aũ bꝛe le roy, direct as Vicõts de ñ les Counties, &c. de levier tiel eſcuage pur eux, ſicome appiert p le Regiſter. Mes ỏ tiels tenants queux teignont per eſcuage de Roy, q̃x ne fueront ove le Roy en Eſcoce, le Roy meſme avera leſcuage.

And becauſe ſuch tenements came firſt from the Lords, it is reaſon that they ſhould have the Eſcuage of their Tenants. And the Lords in ſuch caſe may diſtrein for the eſcuage ſo aſſeſſed, or they in ſome caſes may have the Kings Writs directed to the Sheriffs of the ſame Counties, &c. to levy ſuch eſcuage for them, as it appeareth by the Regiſter. But of ſuch tenants as hold of the King by Eſcuage which were not with the King in *Scotland*, the King himſelf ſhall have the Eſcuage.

Sect. 102.

¶ Item en tiel caſe avandit, lou le Roy face un voyage royall en Eſcoce, & leſcuage eſt aſſeſſe per Parliament, ſi le ſñr diſtreine ſon tenant que tient de luy per ſervice dentier fee de Chivaler pur leſcuage iſſint aſſeſſe, &c. & le tenant plede, & voit averrer que il fuit ove le Roy en Eſcoce &c. per xl. iours, & le Seignior voit averrer le contrarie, il eſt dit, que il ſerra trie per le certificat del Marſhall del hoſt le Roy en eſcript ſouth ſ̃ ſeale q̃ ſerra mis a les Juſtices.

ITem, in ſuch caſe aforeſaid, where the King maketh a voyage Royal into *Scotland*, and the Eſcuage is aſſeſſed by Parliamẽt, if the Lord diſtrain his tenant that holdeth of him by ſervice of a whole Knights fee, for the Eſcuage ſo aſſeſſed, &c. and the tenant pleadeth and will aver that he was with the King in *Scotland*, &c. by 40. dayes, and the Lord will aver the contrary, it is ſaid that it ſhall be tryed by the Certificat of the Marſhall of the Kings hoſt in writing under his ſeale, which ſhall be ſent to the Juſtices.

¶ *Et voit averrer, que il fuit ove le Roy en Eſcoce per* 40. *jours, &c.* (a) *il eſt dit que il ſerra trie per le certificat del Marſhall.* This is a tryal appointed by the law, Ne curia regis deficeret in Juſtitia exhibenda. (b) Herewith agreeth the Regiſter, where the Marſhal is called Conſtabularius exercitus noſtri.

(a) 2.E.4.11.4.E.4.10. 21.E.4.10.F.N.B.85. 11.H.7.5.Lib.9.fol.32. Caſe de Strat.Marc.

(b) Regiſt.88.F.N.B.84. 2.E.4.1.4.E.4.10. 9.H.4.3.11.H.7.5. 21.H.6.50.33.H.6.1.45.

¶ *Marſhall de hoſte le roy.* Mareſchallus exercitus, in Saxon Mariſchalk, i. e. equitum magiſter. This word Marſhal is either derived of Mars or Mare an horſe and ſchalc which ſignifieth in the Saxon Tongue, a Maſter or Governor. (c) In the laws before the conqueſt, it is ſaid, Mareſchalli exercitus ſeu ductores exercitus Heretoches per Anglos vocabantur, illi ordinabant acies denſiſſimas in prœliis & alas conſtituebant prout decuit, & prout ei melius viſum fuerit ad honorem coronæ & ad utilitatem regni. (d) And here it is to be obſerved, that his certificate in this caſe is a Trial in law. I read of

(c) Lamb.fo.136.

(d) 2.E.4.1.b.4.E.4.10. 23.E.4.47.F.N.B.85.

ſix kinds of certificates allowed for Tryals by the common law; the firſt whereof Littleton here ſpeaketh of, in time of war out of the Realm. 2. In time of Peace out of the Realm: (e) As if it be alledged in avoydance of an Outlawry, that the Defendant was in Priſon at Burdeaux in the ſervice of the Major of Burdeaux, it ſhall be tryed by the certificate of the Major of Burdeaux. 3. For matters within the Realm, (f) the cuſtom of London ſhall be certified by the Mayor and Aldermen by the mouth of the Recorder. 4. By certificate of the Sheriff upon a writ to him directed (g) in caſe of priviledge if one be a Citizen or a Forreiner. 5. Tryal of Records by certificate of the Judges in whoſe cuſtody they are by law. All theſe be in temporal cauſes. 6. In cauſes Eccleſiaſtical, as loyalty of marriage, general baſtardy, excommengement, profeſſion. Theſe and the like are regularly to be tryed by the certificate of the Ordinary.

(e) 4.E.3.10.

(f) 5.E.4.30.21.E.4.11.

(g) 10.H.6.10.

And there be divers other Trials allowed by the common law, then by a Jury of twelve men, which you may read at large in the ninth book of my Reports, fol. 30. 31. &c. in the caſe of the Abbot of Strata Marcella, which are as plainly ſet down there, as they can be here: and in this caſe, if the Tryal ſhould not be by certificate, it ſhould want Tryal, which ſhould be inconvenient. Only in this place I will add ſomething of a Forraign Tryal, which I find not in any of the Treatiſes lately published againſt ſingle combats, becauſe it may deter men from that ungodly and unlawful kind of revenge, whereupon many murders have enſued, and prevent all hope of impunity for default of Tryal in that caſe.

If a ſubject of the King be killed by another of his ſubjects out of England in any Forraign country, the wife or he that is heir of the dead may have an Appeale for this murder or homicide before the Conſtable and the Marſhal, whoſe ſentence is upon teſtimony of witneſſes or combate. And accordingly where a ſubject of the King was ſlain in Scotlan

Stat.de 1.H.4.cap 14. 13.H.4.fol.5. Vid.Rot.Parliam.8.H.6 nu.38 Staſf.pl.Cor. fo.65

and by others of the Kings subjects, the wife of the dead had her Appeale therefore before the constable and the Marshal. And so it was (*) resolved in the Raign of Queen Elizabeth in the case of Sir Francis Drake who strook off the head of Down, in partibus transmarinis, that his Ayer and heir might have an Appeale, Sed Regina noluit constituere Constabularium Angliæ, &c. & ideo dormivit appellum.

(*) Anno 25. Eliz.

If a man be mortally wounded in France, and dyeth thereof in England, it is said that an Appeale doth lie upon the said Statute, for it is not punishable by the common law, and the proceeding there (as hath been said) is upon witnesses or combate, and not by Jury, and the mortal wound was given out of the Realm.

Chap. 4. Sect. 103.

Knights Service.

¶ *Service de Chivaler*: Nota, it appeareth by (a) the Register, that it is (b) said unum feodum militis, & not feodum unius militis, as it was said, (c) by some of old, and so duo feodo militis, &c. and sometime these fees are called feoda militaria. Our Author having before treated of Homage, Fealty & Escuage, now commeth to Knight service it self. In Domesday, it is thus recorded, Episcopus Bajecensis ille qui tenet de Modardo reddit ei 30. s. & servitium unius militis.

(a) Glanvil lib. 7. cap. 10.
(b) Regist. 2. 30. E. 3. 24.
(c) Glanvil lib. 7. cap. 14.

Glanvil lib. 7. c. 9. &c.
Fleta lib. 2. cap. 8.
Bracton lib. 2. fol. 85.
Britton fol. 162. & fol. 28. & 95. Ockam in diversis locis.
Mirror. cap. 1. sect. 3.
Sud. Diton.

¶ *Chivaler.* i. e. Eques Knight is a Saxon word, and by them written, Cnite, Chivaler taketh his name from the horse, because they always served in wars on horseback. The Latines called them Equites, the Spaniards, Cavalleroes, the Frenchmen, Chivaliers, the Italians Cavallieri, and the Germans Reiters all from the horse. It is necessary to be seen by what names this service of a Knight is called. It is called (e) Servitium forinsecum quia pertinet ad Dominum Regem & non ad capitalem Dominum nisi cum in propria persona profectus fuerit in servitio, & nisi cum pro servitio suo, satisfecerit Domino Regi, &c. ideo forinsecum dici potest, quia fit & capitur foris sive extra servitium quod fit

(e) Brack. lib. 2. fo. 36, 37.
Briton fol. 164. 165.
Fleta lib. 3. cap. 14.
19. E. 2. avowry 224.
26. Ass. 65. 31. Ass. 30.
30. E. 3. 23. 8. E. 3. 67.
7. H. 4. 19.

¶ Tenure p homage, fealty, & escuage, est a tener p service de chiuler, & trait a luy garde, mariage, & reliefe. Car quant tiel tenant mourust, & son heire male est deins lage de 21. ans, le Seignior ad la terre tenus de luy tanque al age del heire de 21. ans, le quel est appel pleine age, pur ceo que tiel home per entendement del ley nest pas able de faire tiel service de chivaler, devant lage de 21. ans: Et auxy si tiel heire ne soit marie al temps de mort de tiel auncester, donque le seignior avera le garde & le mariage de luy. Mes si tiel tenant devie, son heire female esteant dage de 14. ans, out de plus donque le Seignior

Tenure by homage, fealty & Escuage, is to hold by Knights Service, and it draweth to it Ward, Marriage, and relief. For when such tenant dieth, and his heir male be within the age of 21. years, the Lord shall have the land holden of him untill the age of the heir of 21. years the which is called full age, because such heir by intendment of the Law is not able to do such Knights service before his age of 21. years. And also if such heir be not married at the time of the death of his Ancestor, then the Lord shall have the wardship and marriage of him. But if such tenant dieth, his heir female being of the age of 14. years or more, then the Lord

navera my le garde del terre ne de corps pur ceo que feme de tiel age poit aver baron able de faire service de chivaler. Mes si tiel heire female soit deins lage de 14. ans, & nient marie al temps de la mort son auncestor, donque le Seignior avera le garde de la terre tenus de luy, tanque al age de tiel heire female de 16. ans, pur ceo q̄ il est done per le Statute de Westm. 1. cap. 22. Que per 2. ans procheine ensuant les dits 14. ans, le seignior poit tender convenable mariage sāz disparagement a tiel heire female. Et si le Seignior deins les dits 2. ans ne luy tend tiel mariage, &c. donque el al fine des dits 2. ans, poit enter & ouste son Seignior. Mes si tiel hire female soy marie deins lage de 14. ans en la vie sō ancestor, & son ancestor deby el estreant deins lage de 14. ans, le Seignior navera forz la garde de la terre, jesques a fine de 14. ans; dage de tiel heire female, & donq

shall not have the wardship of the land, nor of the body, beause that a woman of such age may have a husband able to do Knights Service, but if such heir female be within the age of 14. years, and unmarried at the time of the death of her ancestors the Lord shal have the wardship of the land holden of him until the age of such heir female of 16. years. For it is given by the Statute of W. 1. cap. 22. that by the space of two years next ensuing the said 14. years, the Lord may tēder convenable mariage without disparagement to such heir female. And if the Lord within the said two years do not tender such mariage, &c. then she at the end of the said 2. years may enter, and put out her Lord; but if such heir female be married within the age of 14. years in the life of her Ancester, & her ancester dieth, she being within the age of 14. years, the Lord shall have only the Wardship of the Land until the end of the 14. years of age of such

Domino capitali. And it is called Scutagium, as it appeareth (f) by Littleton and many authorities before recited. Sometime droit de espee. Also it is called (g) Regale servitium, quia specialiter pertinet ad Dominum Regem. Ut si dicatur in Carta, faciendo inde forinsecum servitium, vel Regale servitium, vel servitium Domini Regis quod idem est, &c. And another saith: Et sunt quædam servitia forinseca quæ dici poterunt Regalia quæ ad scutum præstantur, & inde habemus Scutagium, & ratione scuti pro feodo militari reputatur, &c. So as in respect of him that doth it, it is called servitium militis, but in respect of him for and to whom it is done, viz. to the King, and for the Realm, it is called servitium Regale, or servitium Domini Regis, &c. (h) In ancient time they which held by Knights service were called Milites, qui per loricas, &c. defendunt, & deserviunt, &c. and sometime this service is called servitium hauberticum. And in ancient time such as held by Knights service for the defence of the Realm had many Privileges granted to them by Law: as for example they might have a Writ De essend' quiet' de tallagio, the effect whereof was (i) Si Th. filius Ranulphi terram suam teneat per servitium militare, sicut Domino Regi monstravit, tunc nullū ab eodem Tho. capiant tallagium nec pro eo dando ipsum distringant, vel homines suos qui per consimile servitium teneant. And this agreeth with the ancient charter of king Henry the 1. before mentioned, which he made on the day of his Coronation for the restitution of the ancient Laws. (k) Militibus qui per loricas terras suas defendunt & deserviunt terras Dominicarum carucat' suarum quietas ab omnibus gildis, & omni opere &c. concedo; and the reason thereof is there yielded, Sicut tam magno gravamine allevati sint

(f) Bracto ubi supra. Fleta lib. 3. cap. 14.

(g) Britton fol. 187. Bracton ubi supra.

(h) Carta Hen. prim. Mat. Paris, Mirror. cap. 2. sect. 17.

(i) Rot. claus. 19. H. 3. m. 22.

(k) Carta H. 1. in libro rub. fol. 41. in scaccario.

ſint, ita equis & armis ſe bene inſtruant ut apti & parati ſint ad ſervitium meum & defenſionem Regni mei. But theſe Priviledges and Quittances are diſcontinued, and the charge remaineth.

(l) Glanvil.lib.7.ca.9.10. Fleta lib.1.ca.8.& 9. & lib.3.cap.16,17.&c. Bracton lib.2.cap.16. Mirror cap.5.ſect.2. Britton. 162.

It is called commonly in (l) our Books ſervitium militare, &c. or ſervitium militis. And this ſervice was created & provided for the defence of the Realm, to perform which ſervice the heirs are not accounted in law able till the age of one and twenty years. Therefore during their minority, the Lord ſhall have the cuſtody of them, not for benefit only, but that the Lord might ſee, that they be in their young years taught the deeds of Chivalry, and other vertuous and worthy Sciences.

(m) Forteſcue.cap.44.

(m) Si hæreditas teneatur per ſervitium militare, tunc per leges infans ipſe, & hæreditas ejus, &c. per Dominum feodi illius cuſtodientur, &c. quis, putas, infantem talem in artibus bellicis quos facere, ratione tenuræ ſuæ, ipſe aſtringitur Domino feodi ſui, melius inſtruere poterit, aut velit, quam Dominus ille, cui ab eo ſervitium tale debetur, & qui majoris potentiæ & honoris æſtimatur, quam ſunt alii amici propinqui tenentis ſui? Ipſe namque ut ſibi ab eodem tenente melius ſerviatur diligentem curam adhibebit, & melius in hiis eum erudire expertus eſſe cenſetur quam reliqui amici juvenis, &c. & revera non minimum erit Regno accommodum, ut incolæ ejus in armis ſint experti, nam audacter quilibet facit, quod ſe ſcire ipſe non diffidit.

(n) Lamb.fol.135.2.

(n) Amongſt the Laws of Saint Edward the Confeſſor it is thus provided, Debent enim univerſi liberi homines, &c. ſecundum feodum ſuum, & ſecundum tenementa ſua arma habere, & illa ſemper prompta conſervare ad tuitionem Regni, & ſervitium Dominorum ſuorum juxta præceptum Domini Regis explendum & peragendum. And William the Conqueror confirmed that Law in theſe words: Statuimus & firmiter præcipimus ut omnes Comites, & Barones, & Milites, & ſervientes, & univerſi liberi homines totius Regni

ſon baron & luy poient enter ẽ la terre & ouſte le ſeignior, car ceo eſt hors de cas de le dit eſtatute, entant que le Seignior ne poit tender marriage a luy que eſt marie, &c. Car devant le dit eſtatute Weſtm. 1. tiel iſſue female que fuit deins age de 14. ans, al tẽps de mort ſon aunceſter, & puis que el avoit accompliſh lage de 14. ans ſans aſcun tender de mariage per le Seignior a luy, tiel heire female donque puiſſoit enter en le terre, & ouſte le ſeignior ſicome appiert per le reherſal & parolx de le dit ſtatute, iſſint que le dit Statute fuit fait en tiel cas, tout pur ladvantage de Seigniors come il ſemble. Mes uncore & touts foits eſt entendue per les parolx de m̃ le Statute que le Seignior navera les deux ans apres les, 14. ans, come eſt avantdit, mes lou tiel heire female ſoit deins lage de 14. ans, nient marie al temps de mort ſ̃ anceſter.

heir female, and then her huſband and ſhe may enter into the land, & ouſt the Lord: For this is out of the caſe of the ſaid ſtatute inſomuch as the Lord cannot tẽder mariage to her which is maried &c. For before the ſaid ſtatute of W. 1. ſuch iſſue female wch was within the age of 14. years at the time of the death of her anceſtor, & after ſhe had accompliſhed the age of 14. years, without any tender of mariage by the Lord unto her, ſuch Heir Female might have entred into the land, & ouſted the Lord as appeareth by the rehearſal and words of the ſaid ſtatute, ſo as the ſaid ſtatute was made (as it ſeemeth) in ſuch caſe altogether for the advantage of Lords. But yet this is alwaies intended by the words of the ſame Statute, that the lord ſhall not have theſe two years after the 14. years as is aforeſaid, but where ſuch heir female is within the age of 14. years, and unmarried at the time of the death of her anceſtor.

regni noſtri prædicti habeant & teneant ſe ſemper in armis & in equis ut decet, & oportet, & quod ſint ſemper prompti & parati ad ſervitium ſuum integrum nobis explendum & peragendum cum ſemper opus adfuerit, ſecundum quod nobis debent de feodis & tenementis ſuis de jure facere &c. But of theſe two Laws the ſtudious and learned reader will gather divers notable things. And therefore if after the Lord hath the wardſhip of the body and the land, the Lord doth releaſe to the infant his right in the Seignlory, or the Seignlory deſcendeth to the infant, he ſhall be out of ward both for the body and the land, for he was in ward in reſpect he was not able to do thoſe ſervices which he ought to do to his Lord, which now are extinct, and Ceſſante cauſa, ceſſat cauſatum. And our Author ſaith, that the tenure by Knights ſervice draweth unto it Ward, Marriage, &c. ſo as there muſt be a tenure continuing. As if the Conuſor in a ſtatute Merchant be in execution, and his land alſo, and the Conuſee releaſe to him all debts, this ſhall diſcharge the execution, for the debt was the cauſe of the Execution, and of the continuance of it till the debt be ſatisfied, therefore the diſcharge of the debt which is the cauſe, diſchargeth the execution which is the effect.

See W.1.cap.38. The ſecond part of the Inſtitutes.

¶ *Et trait a luy gard, marriage, & reliefe.* So as regularly there be ſix incidents to knights ſervice, (viz.) two of honour and ſubmiſſion, as Homage and Fealty. And four of profit, viz. Eſcuage, whereof he hath treated before, Ward, (i.e. Wardſhip of the land) Marriage, and Reliefe; of all which our Author hath ſpoken. But there be other incidents to Knights ſervice beſides theſe, (a) as Aide pur faire fits chivalier, & aide pur file marier, &c. which at the Common Law were uncertain, and were called rationabilia auxilia, becauſe if they were exceſſive and unreaſonable in the judgment of the Court where they were queſtioned, they ought not to be paid: But now as well in the Kings caſe, as in the caſe of the ſubject, they are by Acts of Parliament reduced to certainty, which are worthy your reading.

26.Aſſ.p.7.

(a)Grand.Cuſt.de Norm. ca.35. Regiſt.orig.fo.87. Glanvil.lib.9.ca.8.35. Fleta lib.2.cap.40.& lib.3.ca.14.Mirror.ca.1. Sect.3.Britton fo.55.& 70.F.N.B.82.b. W.1.ca. 35. 25.E.3.ca.11. 11.H.4.34. 5.E.3.11. Vid. Sect.110.

¶ *Gard*, or Ward in Latin Cuſtodia, and hereof the Lord is called Gardian, cuſtos, and the minor is called a Ward or one in Ward. (b) And albeit (as our Author ſaith) Knight ſervice draweth with it Ward, &c. yet by cuſtom the heir of him that holdeth in Socage may be in ward.

(b).8.H.Preſcript.38. Paſch.21.E.1. Coram rege rot.43.Nota pro Hibernia Prior del St. Trinitie de Dublins caſe.

¶ *Marriage.* Maritagium betokeneth not only the copulation of man and wife in marriage, but alſo (as in this place here) the intereſt of the Gardian in beſtowing of a Ward in marriage, which the Law gave to the Lord not for his benefit only, but that he ſhould match him vertuouſly, and in a good family without diſparagement, as ſhall be ſaid hereafter, which is the principal foundation of his eſtate.

¶ (c) *Reliefe.* Relevium, is derived from the Latin word Relevare; for ſo (d) ancient Authors ſay, and give this reaſon, Quia hæreditas quæ jacens fuit per anteceſſoris deceſſum, relevatur in manus hæredum, & propter factam relevationem faciendæ erit ab hærede quædam præſtatio quæ dicitur relevium. And in Domeſday it is called relevamentum and relevatio.

(c) Vid.Sect.112.

(d)Bracton lib.2.ca.36. fo.84.Fleta lib.1.ca.10. & lib.3.ca.16.17. Brit. ca.69.70. Glanvil.lib.9.ca.4. & lib.7.ca.9. Ockam de differentiis reveriorum.

The reliefe of a whole Knights fee is five pound, and ſo according to that rate. And this reliefe was as ſome hold certain by the Common Law, *but the reliefe of Earles and Barons were uncertain, and therefore were called relevia rationabilia but the ſtatute of Magna carta cap. 2. limits them in certain, and mentioneth alſo a Knights fee. But I read in the book of Domeſday, Quod Tainus vel miles regis dominicus moriens pro relevamento dimittebat regi omnia arma ſua & equum unum cum ſella & alium ſine ſella, quod ſi eſſent ei canes vel accipitres præſtabantur regi, ut ſi vellet, acciperet.

(*)Ockam ubi ſupra. Bracton lib.2.fo.85.

Since Littleton wrote (e) there is a good Law made againſt fraudulent Feoffments, Gifts, Grants, &c. contrived of fraud to hinder and defraud Lords, &c. of their reliefs and Heriots amongſt other things, for the expoſition of which ſtatute read the ſtatute read the Authorities quoted in the margent. And it is to be obſerved that the words of the ſaid Act of 13. Eliz. are, (be it thereof declared, ordained, and enacted) and therefore like caſes, and in ſemblable miſchief ſhall be taken within the remedy of this Act by reaſon of this word (declared) whereby it appeareth what the law was before the making of this ſtatute.

)e) 13.Eliz.ca.5. 17.E.3.Relief 2. 7.E.3.ib.11.lib.3.fo.80. &c. Twines caſe. Lib.5.fo.60. Gooches caſe. Lib.6.fo.18.Pakemans caſe. lib.10.fo.56.b. See alſo the ſtatutes of 3.H.7.c.4. & 50.E.3.c.6. Vid.Mich.12.& 13. Eliz. Dier 295.

¶ *Son biere male.* (f) For regularly by the common Law the heir ſhall not be in ward unleſs he claim as heir by deſcent. The ſtatute of Merton, De hiis qui primogenito, feoffare ſolent; (g) did help the feoffments by colluſion in certain caſes. And Britton ſaith that Robert de Walrand a ſage of the Law did adviſe the great Lords of the Realm to make the ſaid ſtatute, which when it was paſt, the ſame Act took his firſt effect in the heir of Walrands own heir, whereof Britton maketh a ſpecial remembrance. But now (h) by the ſtatutes of of 32. and 34. H. 8. of wills, he which holdeth lands by Knights ſervice may by Act executed in his life time, or by his laſt will in writing diſpoſe two parts as by the ſaid Acts appeareth. If he diſpoſe all by act executed, then it ſhall ſtand good againſt the heir, ſo

(f) Britton 168. Fleta lib.1.ca.9.

(g) Merton ca.6. Bract.fo.85.Brit.fo.65. 9.H.4.6.4.H.7.ca.17. 27.H.8.7.89. Partridges caſe.pl.ca.82.

(h)32.H.8.ca.1. 34.H.8.ca.5.

(i) Li.3.fo.25.26.in Butlers caſe.Li.6 fo.75. in Sir George Curſons caſe Li.8.fo.163. Mights caſe.Eod.lib.fo.171. In Vigil Parkers caſe.

(k)Mir.ca.1.ſect.3.

ſo as nothing ſhall deſcend unto the heir. But in caſe of a Deviſe by his laſt will, a third part ſhall deſcend to the heir, though all be deviſed away: and if the Tenant leave a third part to deſcend, then the deviſe is good for the reſidue. (i) But theſe things require ſo many diverſities grounded upon evident reaſons, and are ſo plainly expreſſed in my Commentaries, as they (being very long) ſhall not need to be repeated here. (k) And that the tenure by Knights ſervice draweth to it Ward, Mariage, and Relief, is of great antiquitie, for ſo it was in the time of King Alfred.

(*)39.E.3. 36.tit.Gard. 92. 33.E.3.Gard.162. 11.H.7.12. 19.E.3. Gard.114. 18.Aſſ.18. 40.Aſſ.36.20.El.362. 4.H.6.16.b.F.N.B.143. 6.H.4 4.a.

¶ *Quant tiel tenant mort.* Here Littleton ſpeaketh not of a dying ſeiſed by the Tenant, for in many caſes the heir ſhall be in ward albeit the tenant died not ſeiſed, &c. nor in the homage of the Lord. As if the tenant maketh a feoffement in fee upon condition, and the feoffor dieth, after his death the condition is broken, the heir within age entreth for the condition broken, he ſhall be in ward, and yet the feoffor had no eſtate or right in the land at the time of his death, but only a condition, and which was broken after his deceaſe. (*) But becauſe the condition reſtoreth the Tenant to the land in nature of a deſcent, (for he ſhall be in by deſcent) by the ſame reaſon ſhall it reſtore the Lord to the wardſhip, ſeeing now, (as Littleton ſaith) the heir of his Tenant is within age, and not able to do him ſervice, and no default in the Lord to bar him of his wardſhip.

(l) 7.H.4.12. 11.H.7 12. 22.E.4.7.6.40.E.3.43. 4.M.136.15.E.4.10.11.

(l) And ſo I do take it, that if the heir within age recover in a Dum non fuit compos mentis, or Formedon en deſcender, or remainder as heir, or ſuch like, the heir ſhall be in ward, for theſe be ſtronger caſes than the former, for here a right doth deſcend to the demandant, which right being by courſe of law reſtored to the poſſeſſion of the heir within age, by conſequence the lord is to have the wardſhip of him, but in the caſe of the condition, no right at all deſcended to the heir, as hath been ſaid.

33.E.3.Gard.162.

And ſo if tenant in taile, the remainder in fee, maketh a feoffment in fee, and dieth leaving the iſſue in taile within age, if the feoffee infeoffe the iſſue in taile, whereby he is remitted, he ſhall be in ward to the lord: for as he is reſtored to the title of the land as heir, ſo is the lord reſtored to his title of the wardſhip as lord of the Fee. And to this purpoſe herein I take no difference between a right of action and a right of entry deſcending, when by action the right of the land is lawfully recovered by the heir within age, to his Tenant, and albeit he died not in his homage yet there was a right of homage, and no default or laches was in the lord, or act done by him to prejudice himſelf therof.

21.H.7.12.

But if one levy a fine executory (as Sur grant & render) to a man and his heirs, and he to whom the land is granted and rendred, before execution dieth, his heir being within age entreth, he ſhall not be in ward, for his Anceſtor was never tenant to the lord: and ſo there is manifeſt diverſitie between this and the other caſes. Et ſic de cæteris.

13.El.Dyer 298.

But if the tenant maketh a feoffment in fee of lands holden by Knights ſervice, to the uſe of the feoffee and his heirs, until the time that the feoffor pay to the feoffee or his heirs a hundred pounds, for the which a time and place is limited; the feoffee dieth, his heir within age, the lord ſhall have the wardſhip of the body of the heir, and of the lands of the feoffee, conditionally, for he cannot have a more abſolute intereſt in the wardſhip, than the heir hath in the tenancy: therefore if the feoffor pay the money at the day and place, and entreth into the land, in this caſe both the wardſhip of the body and lands is deveſted, becauſe the lord had no abſolute intereſt in neither of them, but doth depend upon the performance or not performance of the condition.

(*)12.H.4.16. per Thirning.

(*) So if the Conuſor of a fine executory of lands holden by Knights ſervice, dieth his heir within age, the lord ſhall have the wardſhip of the body and land: but if the Conuſee entreth, the heir is diſherited, and the lord hath loſt the whole benefit of his wardſhip.

(m)41.E.3.225. (n) 15.E.4.11.

If the Diſſeiſee dieth, his heir being within age, (m) the lord ſhall have the wardſhip of the heir of the body of the Diſſeiſee. (n) But put the caſe that in that caſe the Diſſeiſor dieth ſeiſed, and his heir within age, the lord may ſeiſe the wardſhip of his heir alſo, and of the land alſo: but the doubt is, whether the heir of the Diſſeiſee ſhall after the deſcent to the heir of the Diſſeiſor, continue in ward, for that after the deſcent, the heir of the Diſſeiſor is become his lawful Tenant, and the heir of the Diſſeiſee is not tenant unto him until he hath recovered the land.

(o) 14.H.8.5.4.H.7.cap. (p)41.E.3.26.tit.avowrie 264.20.H.6.9.48.E.3 8.b.10.E.3.26.31.E3.tit. Gard.116.18.E.3.7 14.H.4.38.1.H.5.Grant 42.5.E.4.3.7.E.4.27. 15.E.4.13.2.E.2.avow. 181.

If Ceſti que uſe before the ſtatute of 27.H.8. had died, his heir within age, the lord (o) ſhould have had the wardſhip of his heir: and if the feoffee had died, his heir within age, the lord ſhould have had the wardſhip of his heir alſo, and ſo a double wardſhip for one and the ſame land, the one by the ſtatute of 4.H.7. the other by the Common law.

(p) Tenant by Knights ſervice maketh a gift in taile, the remainder in fee, Tenant in taile maketh a feoffement in fee, and dieth, his heir within age, the lord ſhall have the wardſhip of him: and if the Feoffee dieth, his heir within age, the lord ſhall have the wardſhip alſo of his heir, and of the land.

If

If tenant by Knights ſervice maketh a gift in taile, and the Donee maketh a feoffement in fee, and the donee dieth his heir within age, the donor ſhall have the wardſhip of him, becauſe he is his tenant in right. (q) But if the feoffee dieth, his heir within age, the Donor ſhall not have the wardſhip of his heir, but the Lord paramount, becauſe he is tenant in fait to him, neither ſhall the donee avow upon the Feoffee or his heir, for the ſervices due unto him, becauſe he muſt in his avowry ſhew the reverſion in fee to be out of him by the feoffement, and conſequently the ſervices incident to the reverſion are alſo out of him, but he ſhall avow upon the Donee and his iſſues: and thus are all the books that ſeem to be at variance, either anſwered or reconciled.

(q) So was it holden Tr. 18.El.in Bom.Banco per Cur. Which my ſelf heard and noted, in Sir Thomas Wyats caſe.
(r) So was it reſolved in Sir Tho.Wyats caſe ubi ſupra.

(a) *La terre tenus de luy, &c.* Littleton here ſpeaketh of lands holden of a ſubject: for if a man hold land of the King by Knights ſervice in Capite, and other lands of other Lords and dieth his heir within age, the King ſhall have the wardſhip of all the lands by his Prerogative: and this was due to the King by the Common law, the fees of certain excepted, as in the ſtatute of Prærogativa Regis cap. 1. appeareth.

(a) Glanvil.lib 7.cap.16. Bract. lib.2.fo.85.86.87. Brit.l.3.c.2.Flet.l.1.c.10 9.H.3.Prerog.25.21.H.3 ib.26.Rot.Finium.6. Johan.Stat. Prerog.Reg.c.1

But if a man holdeth lands of the King by Knights ſervice, as of an Honor or Manor, &c. (b) in that caſe the King ſhall only have the lands holden of him and not of any other. Yet by reaſon of tenures of the King by Knights ſervice, of certain Honours (while they were in the Kings hands) the King (as ſome have ſaid) had (as it were by preſcription) his Prerogative, viz. Raleigh hage net bonony and Peverel and ſo of lands holden by Knights ſervice of the Dutchy of Lancaſter in the County Palatine.

(b) Bract.ubi ſupr.Mag. carta ca.31. 1.E.6.ca.4. 5.E.3.5.47.E.3.21.29.H. 8.Br.tit.Livery 58. 28.H.8.ibid.55.

(c) When an heir hath been in ward to the King by reaſon of a tenure in Capite, after his full age he muſt ſue livery, which is half a years profit of his lands holden. But if he be of full age at the time of the death of his anceſtor, then he ſhall pay for lands in poſſeſſion a whole years profit for Primer ſeiſin: but if it be of a reverſion expectant upon an eſtate for life, as Tenant in Dower, Tenant by the Curteſie, or Tenant for life, then he ſhall pay but the moity of one years profit.

(c) Lib.8.fol.172. Hales caſe.38.H.8.Br.tit.Livery 60. Vid.ſect.154.

(d) If the heir be in ward by reaſon of a tenure of an Honour or Manor (except as before) he ſhall not ſue livery, but an Ouſter le maine cum exitibus, albeit he never made tender. (e) And if he be of full age, the King ſhall have no Primer ſeiſin, but reliefe. But where the tenure is in Capite, there the King ſhall have the mean profits until the tender be made, and if the tender be made and not duly purſued, the King ſhall alſo have all the mean profits.

(d) 1. El.Dier 168.
(e) 32.H.8.tit.Liv.Br.62

(f) He that holdeth of the King by ſocage in chief, and dieth, his heir of full age, the King ſhall have livery and Primer ſeiſin only of the lands ſo holden, and not of the lands holden of others. (g) But if the heir of ſuch a Tenant in Socage in chief, be within the age of fourteen at the death of his Anceſtor, he ſhall neither ſue livery, nor pay Primer ſeiſin, either then or any time after: and the reaſon thereof is, for that the cuſtody of his body and lands in that caſe, belong to the Prochein amy, as Gardian in Socage. (h) Neither ſhall the King have Primer ſeiſin of lands holden in Burgage, (as ſome have ſaid) for that it is no Tenure in Capite.

(f) 38.H.8.Liver.Br.60. 45.E.3.11. 35.H.6 52. Stanf.13.b.
(g) 20.El.Dy.362. F.N.B.259.b.
(h) F.N.B.263.7 E.4.17. Stanf.Prær.13.Br.tit. Liv.64.

Note, there is a general livery, and a ſpecial livery: a general livery hath two properties:

Firſt, it is full of charge to the heir, for he muſt find an office in every County where he hath land, or elſe he cannot ſue a general livery, and he muſt ſue out his writ of Ætate probanda, &c.

(i) The ſecond property is, that it is full of danger: Firſt, It concludeth the heir for ever after to deny any Tenure found in the Office. Secondly, if livery be not ſued of all and of every parcel which the King ought to have, whether it be found in the office or not found (for a general livery could not be ſued by parcels) the livery is void, and the King may reſeiſe the lands, and be anſwered of the mean profits. So it is if the Office be inſufficient, or the Proceſs whereof the livery was made be inſufficient, or the like, the King ſhall reſeiſe, as is aforeſaid. (a) Therefore for the eaſe of the heir, and for avoiding of ſuch danger, the heir for the moſt part ſueth out a ſpecial livery, which containeth a beneficial pardon, and ſaveth the ſaid charges, and preventeth the ſaid concluſion, and the other dangers, which being of grace, and not of right, as the general livery is, the King may well and juſtly take more for a ſpecial livery, than for a general, for the cauſes aforeſaid, but ever with ſuch moderation as the heir may cheerfully go through therewith.

(i) 46.E 3.33. 47.E.3.21 21.H.6.28.b.33.H.6.50. 29.Aſſ.8.Pl.Com. Countee of Leic.caſe.44.E.3.1 & 25.12.R.2.Liv.28. 2.H.7.fol.12.
(a) 1.H.4.6.b. 37.H.8.Eſtop.Br.218.7.E.6.ib.222 Scurfields caſe.Tr.8 Jain cur. Ward.23.El.Dyer 377. 28.H.8.Br.tit. Livery 56.

Note that a livery is in nature of a reſtitution, which is to be taken favourably: for if livery be made of a manor cum pertinentiis, the heir ſhall thereby have the advowſon appendant, otherwiſe it is in Grants by Letters Patents.

41.E.3.5.5.E.6.27.aſſ.48 Pl.Com.252.20.El.Dyer 360.

Since the time that Littleton wrote (c) there is a Court of Wards and Liveries erected by Authority of Parliament concerning the order of the Kings wards, &c. to be holden before the Maſter of the Wards, and the Counſel of that Court appointed by thoſe Acts. This hath

(c) 32.H.8.46. 33.H.8. cap.21.

made ſuch a manifold alteration, as were too long here to be inſerted, and doth belong to another Treatiſe mentioned in the Epiſtle of the Juriſdiction of Courts, where it were neceſſary, that the true juriſdiction of that Court ſhould be ſet down, a matter of no great difficulty, ſeeing it began ſo late by Authority of Parliament. And ſince Littletons time, (d) there is a right profitable Statute made concerning the finding of Offices and other things, not only concerning the Kings Wards, or their rights and poſſeſſions, but ſome other proviſions very beneficial for the ſubject, in all to the number of 12. (e) Firſt that ſuch perſons as held for term of years, or by copy of Court Roll, or have any rent, common or profit appender out of any lands found in any office, whereby the King is intituled to the wardſhip of the lands or tenements, or to the forfeiture of the lands or tenements upon attainder of treaſon, felony, præmunire, or any other offence, yet may they have, hold, enjoy, and perceive their ſeveral eſtates, intereſts, and profits, although they be not found in the office. And this being a beneficial Law the eſtates of tenant by Statute Staple, Merchant, and elegit, and Executors that hold lands for payment of debts are taken to be within the benefit of the clauſe: (f) and ſo is a doubt in 14. El. Dier cleered.

(d) 2.E.6.ca.8.

(e) 4.E.4.23.33.H.8.tit. entre congeabl.Br.125.

(f) 14.Eliz.Dier fo.319.

2. Where it is found, that the heir is of fewer years than in truth he is, he ſhall not be concluded hereby, (g) but every ſuch heir at his very full age may proſecute a writ of ætate probanda, and ſue his Livery or ouſter le maine: in which caſe he had no remedy by the common Law.

(g) 5.Mar.Dier 156.

(a) 3. Where one perſon or more be found heir, where another perſon is heir, the party grieved had no remedy.

(a) 22.E.3.31.38. 9.H.6.18. 12.E.4.16. 30.Aſſ.28.lib.4.fo.56.& 60.Sadlers caſe.Stanf. prerog.58.b.52. 5.E.4.4. 16.E.4.4. 1.H.7.14. 8.H.7.12. 4.H.7.15. 8.H.7.11.F.N.B.262. 12.R.2.Livery 28.F.N.B 233.Lib.7.fo.44.45. Kens caſe.

4. Or where one perſon or more be found heir in one County, and another perſon or perſons found heir in another County, there could have been no interpleading.

5. Or if any perſon be utterly found by office Lunatick, or Idiot, or dead, the party grieved may traverſe the ſaid offices, and you may read in Kens caſe how the office ſhall be traverſed upon this Act.

(b) 6. Where it is untruly found by office that any perſon attainted of Treaſon, Felony, or Præmunire is ſeiſed of any lands, &c. the party grieved having juſt title of freehold, ſhall have his travers or Monſtrans de droit (without being driven by this double matter of Record to his petition of right as he was before this Statute) which is much more ſpeedy than the petition, for upon the petition there be four writs of ſearch, and every one muſt have 40. dates before the ſerving, and now but two writs of ſearch.

(b) 4.E.4.23. 10.H.6.19. Lib.4.fo.56.&c. Sadlers caſe.32.H.8.entre Cong. Br.125.14.E.3.cap.14.

(c) Vid.lib.6.fol.6. Wheelers caſe.

7. Where an office is found by theſe words or the like quod de quo vel de quibus tenements prædicta tenentur, juratores præd' ignorant, or holden of the King per quæ ſervitia juratores ignorant, it ſhall not be taken for an immediate tenure of the King in chief, but in ſuch caſes a melius inquirendum to be awarded as hath been accuſtomed of old time. This branch hath been (d) expounded, for if the firſt Office find a tenure of the King per quæ ſervitia, &c. yet if upon the Melius inquirendum the tenure be found of a ſubject, the firſt office hath loſt his force per ſenſum hujus ſtatuti, and need not be traverſed, and the Melius, &c. is in nature of the Diem clauſit extremum or mandamus, &c. and this was but a declaration of the ancient common Law, as by the words of the ſtatute (as hath been accuſtomed of old) it appeareth; but if upon the melius it be found again as uncertainly as before is ſaid, then it is in judgment of Law a tenure in Capite, and ſo it was before the making of this Act, and ſo are the books that ſpeak hereof to be intended; but if upon the melius a tenure be found of the King Ut de manerio per quæ ſervitia, &c. it ſhall be taken in Knights ſervice.

(d) 12.Eliz.Dier f.292.a. Lib.8.f.168.ParisStoughters caſe.

13.Eliz.Dier 306. 4.H.6.13. 10.H.4.2.b.

8. Where it is found that Lands, &c. are holden of the King immediately, where in truth they are holden of a common perſon and not of the King immediately, and that heir is within age, ſuch heir within age ſhall have his traverſe, &c. which he could not have had by the common Law.

9. The mean Lords of whom the lands are holden which the King hath by his prerogative during the minority of the heir ſhall receive and take ſuch Rents as are due unto them by the hands of ſuch of the Kings officers as receive the profits of the ſame lands, where before that Act, the Lords uſed to ſpare the Rents due, &c. during the Kings poſſeſſion, and after livery ſued, charged the heir with all the arrearages.

10. There is a proviſion for offices found before the ſtatute or before the 20. day of March next after the Act.

11. A ſpecial clauſe is, that a Scire fac' ſhall be awarded upon every travers by force of this Act, and where the party was put to his petition, there upon the travers there ſhall be two writs of ſearch granted.

12. And laſtly if judgment ſhall be given againſt the King upon a travers by vertue of this Act, all former rights appearing of Record are ſaved to the King. But albeit theſe points are moſt neceſſary to be known, yet let us now return to Littleton.

15.E.4.12. 46.E.3.12. 21.H.6.11.3.H.7.5.

Littleton warily and materially (treating of a common perſon) ſaith tenus de luy holden of him, for he ſhall have nothing in ward but that which is holden of him. But the King by his prerogative,

prerogative shall not only have such lands and tenements which (as hath been said) the heir of his Tenant by Knights service in capite holdeth of others, but such inheritances also as are not holden at all of any, as Rent Charges, Rent Seck, Fayrs, Markets, Warrens, Annuities, and the like; and so is the law clearly holden at this day, as it hath been resolved; and so experience teacheth, that the King by his prerogative given to him by the ancient common Law shall have those inheritances not holden, and so the quære made by (o) Stanford is cleared and made without question. (o) Stanf. prær. fo. 8.

The Law is changed since Littleton wrote in many cases both for the mariage of the body, and for the wardship of the lands, and a far greater benefit given to the Lords than the Common Law gave them, and some advantage given to the heirs, which before they had not, which shall be touched briefly.

If the Father had made an estate for life or a gift in taile of lands holden by Knights service to his eldest son, or other heir apparent within age, the remainder in fee to any other, and died, the heir should not have been in ward, for this was out of the statute of Merlebridge: But at this day the heir shall be in that case in ward for his body, and a third part of his Land. Merlebridge ca. 1. pl. com. 82. 27. H. 10. 33. H. 6. 14.

(a) So if the father had infeoffed his eldest son within age and a stranger and the heirs of the son, and died, the son should have been out of ward; but at this day he shall be in ward for his body, and for a third part of his moity. (b) So if the father had infeoffed any of his younger sons or others for the making of his wife a joynture, or for the advancement of his daughters, or for the paiment of his debts, and after infeoffe and convey the land to his heir and died, his heir within age, his heir should not have been in ward, because it was bound by the Law of nature and Nations to provide for them, but now in all these cases the heir shall be in ward for his body, and a third part of the land, and all this groweth by construction upon the Statutes of 32. and 34. H. 8. (c) But if either the eldest son, or any of the younger sons purchase lands of his father which are holden by Knights service, bona fide for the reasonable value, this is out of those statutes, and the heir shall neither be in ward, nor pay Primer seison. (a) 31. E. 3. Collusion 29. 33. H. 6. 14. (b) 33. H. 6. 14. 27. H. 8. 7. Lib. 6. fo. 76. 77. Sir George Cursons case. 10. Eliz. 260. 3. Eliz. 193. 20. Eliz. 361. 19. Eliz. 276 5. Mariæ 158. (c) Lib. 8. fo. 83. Leonard Loveys case.

And in all the cases aboveſaid, (for example) if a feoffement be made to the use of his wife for life, or to the use of any of his younger sons for life, or to the use of some persons for life for paiment of debts, and upon all these estates a remainder is limited over, if the wife or tenant for life die in the life of the father, (d) or if it be conveyed to the use of the wife or younger children in fee, or fee taile, or in fee for the payment of debts, and these lands are conveyed away in the life time of the father, after the decease of the father no Wardship &c. accrueth by force of any of the said statutes, for such estates must continue till the title of wardship do grow. (d) Lib. 2. fo. 91. Bingham's case. lib. 6. ubi supra 84. Lib. 8. fo. 165. Digbyes case.

(e) If the father convey his lands holden by Knights service either of the King or of any mean Lord to his middle son in taile, the remainder to the youngest son in fee, and dieth, the eldest being within age, and the King or Lord seize the body and two parts of the land, if the middle brother die without issue, the King or the Lord shall not have any benefit of the statute against him in remainder, for the statute was once satisfied, and the statute extendeth not to him in remainder. (e) 14. Eliz. Dier 308. 3. Mariæ Dier 130. Lib. 2. fo. 93. 94. Bingham's case, & North-cots case. Lib. 10 fo. 80. b. Leonard Loveys case.

(f) If there be a grandfather, father, and divers sons, and the grandfather in the life of the father convey his lands holden by Knights service to any of the sons, this is out of the statute of 32. H. 8. and if the grandfather die, there is neither Wardship nor Primer seison due, for the father hath the immediate care of his sons, but if the father be dead, then the care of them belongs to the grandfather, and then if the grandfather convey any of the lands to any of the sons, it is within the said statute: (g) and a conveyance to the use of any of his collateral blood, which is not his heir apparent is out of the said statute. And so are conveyances either by father or mother to or to the use of bastard children out of the statute, for qui ex damnato coitu nascuntur, inter liberos non computentur. And the Preamble speaketh of lawful generations. If a man seised of lands holden in Socage convey them to the use of his wife or of his children, or paiment of his debts, and after purchase lands holden by Knights service in Capite, and dieth his heir within age, the King shall have no part of the Socage land. (h) But if in that case he had by his will in writing devised his socage lands in fee, and after purchased lands holden in capite, and dieth, the King shall have so much of the socage lands as will make a full third part of all. The benefits that grew to the subject by those acts of Parliament, were, that tenants in fee simple might devise their lands by their last wills in writing in such manner and form, as by the said Acts appeareth. Also that the father might infeoffe his eldest son or other heir lineal or collateral of his lands holden by Knights service, and two parts of the lands shall be out of ward. And in * Mights case you shall read excellent matter of estates made upon collusion. (f) Lib 6. fo. 77. Sir George Cursons case. 2. Eliz. Dier 181. 8. Eliz. Dier 252. (g) Lib. 10. fo. 83. Leon. Loveys case. 18. Eliz. Dier 385. (h) Leon. Loveys case. ubi supra. Butler & Bakers case lib. 3. fol. 25. &c. * Lib. 8. fol. 163. Mights case.

And both the statutes of 32. and 34. H. 8. concerning Wills and Wardships are many wayes prejudicial to the heirs, as taking one example for many. If Tenant by Knights

ſervice make a leaſſment in fee to the uſe of his wife and her heirs, or to the uſe of a younger ſon and his heirs, or wholly for the payment of his debts. In theſe caſes although nothing at all of the lands ſo holden deſcend to the heir, but he is diſherited of the ſame, yet his body ſhall be in ward: but this for a little taſte may ſuffice, more hereof you may read in my Reports in the ſeveral Caſes noted in the margent.

Leon. Lovеys caſe ubi ſupra. 22. Eliz. Dier 367.

32. E. 3. gard. 61.

¶ *Pleine age.* Full age regularly is one and twenty years.

8. H. 5. 4.

¶ *Entendment del ley.* Entendment i. e. intellectus, the underſtanding or intelligence of the Law. Regularly Judges ought to adjudge according to the common intendment of Law.

10. H. 6. 8. 21. E. 3. 33. 2. 27. H. 8. fo. 10.

By intendment of Law every Parſon or Rector of a Church is ſuppoſed to be reſident on his Benefice, unleſs the contrary be proved.

Of common intendment one part of a Manor ſhall not be of another nature than the reſt.

Of common intendment a will ſhall not be ſuppoſed to be made by colluſion. In facto quod ſe habet ad bonum & malum, magis de bono, quam de malo lex intendit. Lex intendit vicinum vicini facta ſcire. Nulla impoſſibilia aut inhoneſta ſunt præſumenda, vera autem & honeſta, & poſſibilia. Lex ſemper intendit quod convenit rationi. As in this caſe, the Gardian ſhall have the cuſtody of the Land until the heir come to his full age of one and twenty years, becauſe by intendment of Law the heir is not able to do Knights Service before that age, which is grounded upon apparent reaſon. There note that the full age of a man or woman to alien, demiſe, let, contract, &c. is one and twenty years, the Civil Law five and twenty years, for then the Romans accounted men to have plenam maturitatem, and the Lombards at eighteen years.

Vide Britton fo. 169.

¶ *Si le heirene ſoit marie al temps del mort de tiel Anceſter &c.* Anceſter is derived of the latin word anteceſſor, and in law there is a difference between anteceſſor and prædeceſſor. For anteceſſor applyed to a natural perſon, as I. S. & anteceſſores ſui, but prædeceſſor is applied to a body Politick or Corporate, as Epiſcopus London & prædeceſſores ſui. Rector de D. & prædeceſſores ſui, &c.

Glanvil. lib. 7. ca. 1. Mirror ca. 5. ſect. 2. Britton fo. 168. b. 39. H. 6. cap. 2.

¶ *Mes ſi tiel tenant devie ſon heire female eſteant del age de* 14. *ans &c.* And the reaſon as I find in Antiquity, wherefore the Law gave the marriage of the heir female if ſhe were within the age of fourteen, and that ſhe ſhould not marry her ſelf, was pur ceo que les heires females de noſtre terre ne ſe marieront a nous enemies, & dount il nous conviendroit lour homage prendre, ſi eux ſe puiſſent marier a lour volunt. This is a ſpecial age to an heir female to be out of ward if ſhe attain unto it in the life of her anceſtor, for at that age ſhe may have a husband able to do Knights Service. A woman hath ſeven ages for ſeveral purpoſes appointed to her by law: as, ſeven years for the Lord to have aid pur file marier: nine years to deſerve Dower, twelve years to conſent to marriage, until fourteen years to be in ward, fourteen years to be out ward, if ſhe attained thereunto in the life of her anceſtor; ſixteen years for to tender her marriage if ſhe were under the age of fourteen at the death of her anceſtor, and one and twenty years to alienate her lands, Goods and Chattels.

35. H. 6. 40. Bracton lib. 2. cap. 37.

34. E. 1. Stat. 3. Glanvil. lib. 7. cap. 9. Dier 5. Marie 162. Bracton lib. 2. cap. 37. F. N. B. 202.

A man alſo by the law for ſeveral purpoſes hath divers ages aſſigned unto him, viz. twelve years to take the oath of Allegeance in the Town or Leet: fourteen years to conſent to marriage, fourteen years for the heir in ſocage to chooſe his Guardian, and fourteen years is alſo accounted his age of diſcretion: fifteen years for the Lord to have aid pur faire fitz Chivaler: under one and twenty to be in ward to the Lord by Knights ſervice: under fourteen to be in ward to Gardian in Socage: fourteen to be out of ward of Gardian in Socage, and one and twenty to be out of ward of Gardian in Chivalrie, and to alien his Lands, Goods and Chattels.

25. H. 6. 52. tit. gard. 71. Stanford. 3. b. F. N. B. 256. 259. 35. H. 6. 40.

¶ *Mes ſi tiel heire female ſoit deins lage de* 14. *ans & nient marie, &c. Le Seignior avera la gard del terre.* But put caſe that the Lord cannot have the wardſhip of the land, as if the Lord before the age of fourteen granteth over the wardſhip of the body, in this caſe the grantee of the body cannot enjoy the benefit of the two years, becauſe he cannot hold over the land, and the Lord which hath the wardſhip of the land only ſhould loſe the benefit of the two years, becauſe he hath the lands only and cannot tender any marriage, therefore in this caſe the heir female ſhall enter into her land at her age of 14. years. So if a tenant holdeth of one Lord by priority, and of another by poſteriority and dieth, his heir female within the age of 14. years, the Lord by poſteriority ſhall have the lands but until her age of 14. years, becauſe the mariage belongeth not to him. Alſo if the Lord marrieth the heir female within the two years, her husband and ſhe ſhall preſently enter into the lands: For, Ceſſante cauſa, ceſſat effectus: & ceſſante ratione legis, ceſſat beneficium legis.

Britton fo. 169. 35. H. 6. 52.

If the Lord tender a convenable marriage to the heir within the two years, and ſhe marry elſewhere within thoſe two years, the Lord ſhall not have the forfeiture of the marriage, for the ſtatute giveth the two years only to make a tender. 35.H.6.52.35.H.6.tit. gard.71.Lib.6.fol.71.the Lord Darcies caſe.

¶ *Et ſi le ſeignior deins les dits* 2. *ans ne luy tender tiel marriage, &c. donque el al fine del dits* 2. *ans poet entrer, & ouſte le ſeignior.* This is ſo evident, as it needeth no explanation.

¶ *Mes ſi tiel heire female ſoit Marie deins lage de* 14. *ans en la vie ſon Anceſter, & ſon Anceſter devie il eſteant deins age de* 14. *ans, le Seignior navera la gard forſque de la terre jeſque al age de* 14. *ans, &c.* Note, albeit the heir female be married at the age of twelve years in the life of her Anceſtor, (at which age ſhe may conſent to Matrimony) to a man of full age, that is able to do Knights ſervice; yet if the Anceſtor die before her age of fourteen, the Gardian ſhall have the land until her age of fourteen, becauſe (as hath been ſaid) that is the time appointed by the common law. And ſo if the heir male be married in the life of the Anceſtor at his age of fourteen years, and the Anceſtor dieth, the Lord ſhall have the land until the ward commeth to the age of one and twenty. F.N.B.143.

¶ *Car ceo eſt hors del caſe del dit ſtatute, intant que le Seignior ne poet tender marriage a luy que eſt Marie.*

Natura non facit vacuum, nec lex ſupervacuum. The law doth never enforce a man to do a vain thing.

And where the ſaid ſtatute of W. 1. giveth unto the Lord the ſaid two years, thereby is implyed, that if he dyeth within the two years, his Executors or Adminiſtrators ſhall have the ſame. For when the ſtatute veſteth an Intereſt in the Lord, the law giveth the ſame to his Executors or Adminiſtrators. Then put caſe, That a Lord hath the wardſhip of the body and land of an heir female, and maketh his Executor, and dyeth before her age of fourteen years, whether the Executor ſhall have the two years, becauſe the Executor is not Lord. But I take it, the Executor having the wardſhip of the body and land, ſhall in that caſe have the two years, for that they were veſted in the Lord. 27.H.8.3. 11.E.3.Exec. 77.4.E.3.55. 28.Aſſ.p.7.

It is further provided by the ſaid ſtatute, that if the Lord tender a convenable marriage to the heir female, within the ſaid two years, and the heir female refuſeth, then the Lord ſhall hold the land until her age of one and twenty years, and further until he hath levied the value of her marriage. But if the Lord doth not tender a marriage within the two years, he ſhall loſe the value of the marriage, and content himſelf with the two years value. 31.Aſſ.p.26. Lib.6.fol.71.L.Darcies Caſe.

¶ *Car devant le dit ſtatute, &c. ſicome appiert per le rehearſal & parols de le dit ſtatute.* Nota, the rehearſal or preamble of the ſtatute is a good mean to find out the meaning of the ſtatute; and as it were a key to open the underſtanding thereof. The tender of a marriage to an heir female before the age of fourteen is void, which muſt be underſtood where the Lord may hold the land for the ſaid two years, for then the ſtatute appointeth the time of the tender, but where the Lord cannot have the two years, he may tender a marriage to the heir female at any time after the age of twelve and before fourteen; for ſo he might have done at the common law. 35.H.6.52.gard 71. 35.H.6.52.gard 71. Lib.6.fol.71. Lord Darcies caſe. Britton 169.

Sect. 104.

¶ NOta, que le pleine age de male & female ſolonque le common parlance, eſt dit lage de 21. ans. Et lage de diſcretion eſt dit lage de 14. ans, car a tiel age le enf. que eſt marie deins tiel age a un feme, puit agreer

NOte that the full age of male and female according to common ſpeech is ſaid the age of 21. years. And the age of diſcretion is called the age of 14. years. For at this age, the Infant which is maried within ſuch age to a wo-

¶ Of full age, which is the age of one and twenty, and of the age of diſcretion, which is the age of fourteen ſomewhat hath been ſpoken before. But now to the point of agreement or diſagreement in this caſe. The time of agreement, or diſagreement, when they marry Infra annos nubiles, is for the woman at 12. or after, and for the man, at fourteen or after, and there need no new marriage, if they ſo agree, but diſagree they can-

5.Mar.gard.Br.pl.ultimo 39.E.3.32.33.prær.reg. cap.6.Tr.24.Eliz.Rot. 842.in bank le roy. Baniſters caſe.

not before the ſaid ages, and then they may diſagree and marry again to others without any divorce: and if they once after give conſent, they can never diſagree after. If a man of the age of fourteen marry a woman of the age of ten, at the age of twelve he may aſwel diſagree, as ſhe may, though he were of the age of conſent, becauſe in contracts of Matrimony either both muſt be bound, or equal election of diſagreement given to both, and ſo è converſo, if the woman be of the age of conſent, and the man under.

a tiel mariage, ou diſagreer.

man, may agree or diſagree to ſuch marriage.

Sect. 105.

Et ſi la gardein en chivalrie marie un foits le garde deins lage de 14. ans, a un feme, & puis ſil al age de 14. ans diſagree a le mariage, il eſt dit per aſcuns, que lenfant neſt pas tenuz per le ley deſtre auterfoits marie per ſon gardeine, pur ceo que le gardeine avoit un foits le mariage de luy, & pur ceo il fuit hors de ſon garde, quant al garde de ſon corps. Et quant il avoit un foits le mariage de luy & un foits fuit hors de ſon garde, il navera plus avant le mariage de luy.

And if the gardian in Chivalry doth once marry the Ward within his age of 14. years to a woman, & if afterward at his age of 14. years he diſagree to the marriage, it is ſaid by ſome, that the Infant is not tied by the Law, to be again married by his Gardian, for that the Gardian had once the marriage of him, and becauſe he was once out of his Ward, as to the ward of his body. And when he had once the marriage of him, and he was once out of Wardſhip, he ſhall no more have the marriage of him.

23.E.1.gard.137. Britton,fol.169.acc.

It is a maxime in law, Quod Dominus non maritabit minorem in cuſtodia ſua niſi ſemel. And another ſaith, Si ſemel legitimè nupt' fuer', &c. poſtmodum non tenebuntur ſub cuſtodia dominorum eſſe. Albeit this mariage is de facto, and not de jure, and though the diſagreement diſſolveth it ab initio, yet the Lord ſhall never have the marriage of him.

Glanvil,lib.7.cap.12.

27.H.6.gard.118.

27.H.6.gard.118.

And ſo if the Gardian marrieth his ward to a woman, and after the marriage is diſſolved by reaſon of a precontract, yet the Gardian ſhall never have the marriage of the ward again.

27.H.6.gard.118.

But if one raviſheth a ward from the Lord and marrieth him within the age of conſent, in that caſe if the Lord taketh again his ward, and he at the age of conſent diſagreeth to the marriage the Lord ſhall have the marriage of him, for he never had it before.

F.N.B.243.

So likewiſe, if the Anceſtor marrieth his heir apparant infra annos nubiles, and dieth his heir within age, the ward diſagreeth, the Gardian ſhall have the wardſhip of him. The ſame law it is in the ſame caſe, if the wife dyeth before the age of conſent, the Lord ſhall have the marriage of the heir.

7.H.6.11.

And ſo note a diverſity when the ward is married by the Anceſtor or by a Raviſher, and when by the Gardian himſelf, (a) For if the Anceſtor marry his heir apparent infra annos nubiles and dieth: In this caſe if the marriage be diſſolved by diſagreement, either of the ward or of his wife, the Gardian ſhall have the marriage of him. (b) And ſo it is if a Raviſhor marry a ward infra annos nubiles, and the marriage is diſſolved, ut ſupra, the Gardian ſhall have the marriage.

(a) 30.E.1.gard.156. 12.E.1.gard.138. 21.E.3.19.20.E.2. gard.41. Temps E.1. ibidem 128.35.H.6.45.7 H.6.11. Vide Prer.Reg. cap.6.13.H.3.gard.147. Stanf.prer.26.27.

If the heir male in ward of the age of ten years be married without the conſent of the Lord, & may tender unto the heir infra annos nubiles, a marriage, albeit he be ſo married, and if he refuſe, and agree to the former marriage, the Lord ſhall have the forfeiture of his marriage, as it hath been holden; But otherwiſe it is (c) (ſaith Littleton) where the Gardian himſelf marrieth the ward, ut ſupra: And the reaſon of the diverſity is, becauſe in this caſe the Gardian had once the marriage of him, but ſo had not he in either of the other caſes, and it is a Maxime in law, Quod Dominus non maritabit pupillum niſi ſemel.

(b) 27.H.6.gard.118. F.N.B.143.m. 19.E.3.Judgment 123. 45.E.3.16.

(c) 47.E.3.tit.action ſur le ſtatute, 38. and the books abovesaid.

It appeareth upon conſideration of all the books aforeſaid, that where the Anceſtor marrieth his heir apparent within the age of conſent, and dieth, the Infant ſtill being within the age of conſent, the Lord may take the Infant (if he will) into his poſſeſſion, in reſpect the Infant may diſagree to the marriage, and if the Infant be detayned from him, he ſhall recover him in a writ of Raviſhment of ward, and thereupon have the Infant delivered to him. (d) But if the Anceſtor marrieth his heir apparent infra annos nubiles, and dieth his heir being infra annos nubiles, and after age of conſent the heir agreeth to the marriage, neither the King nor the Lord ſhall have the marriage, for now it is a marriage ab initio, and there need no other marriage.

(d)7.H.6.11.adjudge in the book at large.

Sect. 106.

¶ Eſt meſme le manner eſt, ſi le gardein luy marie, & la feme debie eſteant lenfant deins lage de xiv. ans, ou xxi.

IN the ſame manner it is if the Gardian marry him & the wife die the Infant being within the age of 14. years or 21.

¶ This Littleton addeth becauſe he ſpake in the caſe next before of a diſagreement by the Infant, here he ſaith, that if the wife die, the Infant being within the age of conſent.

Sect. 107.

¶ Et que tiel enfant poit diſagreer a tiel marriage, quant il vient al age de xiv. ans, il eſt prove per les parolx del ſtatute de Merton Cap. 6. que iſſint dit.

AND that ſuch Infant may diſagree to ſuch marriage when he comes to the age of 14. years, it is proved by the words of the ſtatute of *Merton*, *cap.*6. which ſaith thus:

De dominis qui maritaverint illos quos habent in cuſtodia ſua, villanis, vel aliis, ſicut burgenſibus ubi diſparagentur, ſi talis hæres fuerit infra 14. *annos, & talis ætatis quod matrimonio conſentire non poſſit, tunc ſi parentes illi conquerantur, dominus amittat cuſtodiam illam uſque ad ætatem hæredis, & omne commodum quod inde receptum fuerit convertatur ad commodum hæredis infra ætatem exiſtentis, ſecundum diſpoſitionem parentum propter dedecus ei impoſitum. Si autem fuerit* 14. ans & ultra, *quod conſentire poſſit, & tali matrimonio conſenſerit, nulla ſequatur pœna.*

Et iſſint eſt prove p meſme le eſtatute, que nul diſparagement eſt mes lou celuy que eſt en garde eſt marie deins lage de xiv. ans.

And ſo it is proved by the ſame ſtatute, that there is no diſparagement but where he which is in Ward is married within the age of 14. years.

¶ *Eſtatute De Merton.* So called becauſe the Parliament was holden at Merton.

¶ *Et que tiel enfant poit diſagreer, &c. il eſt prove, &c.* Note the time of diſagreement is ſet down by Act of Parliament, and ſo obſerved by Littleton, who ſeeks no other proof therein then by the law of England. Merton, cap. 6.

¶ *Ubi diſparagentur.* Diſparagement, diſparagatio commeth of the Verb diſparago, and that of diſpar, and ago.

Now it is neceſſary to be underſtood what diſparagements there be for the which the heir may refuſe.

And of ſuch diſparagements there be four kinds. The firſt propter vitium animi, as an Ideot, non compos mentis, a lunatique, &c. The ſecond propter vitium ſanguinis, as firſt a Villein. 2. Burgenſis. 3. The ſonne or daughter of a perſon attainted of treaſon or felony, albeit pardoned, for the blood is corrupted. 4. A Baſtard. 5. An alien or the child of an Alien, Burgenſis is a man of trade, as an Haberdaſher, a Draper

Bracton lib.2.fol.91. Britton fo.169. Fleta lib. 1.cap.12. Mirror cap.2. Sect.17. Rot. Parl. 18.E. 1.fo.9. The daughter of Nevil married to the ſon of Tho. of Weyland after his attainder.

Draper or the like, (and this agreeth with the civil law, Patricii cum plebeis matrimonia ne contrahant,) wherevf Glanvil ſpeaketh thus, Si vero fuerit filius burgenſis ætatem habere tunc intelligitur, quando diſcrete ſciverit denarios numerare, & pannos ulnare & alia paterna negotia ſimiliter exercere.

The third, propter vitium corporis, at firſt de membris, having but one hand, one foot, one eye, &c. Secondly, deformity, as to look a ſquint, a creeple, halt, lame, decrepit, crooked, &c. Thirdly, Vexation, as blind, deaf, dumb, &c. Fourthly, Diſeaſe horrible, as leproſie, Palſie, Dropſie, or ſuch like Diſeaſes. Fifthly, great and continual infirmity, as a conſumption and ſuch like. Sixthly, Impotency to have children in reſpect either of age paſt children, or ſo tender years as there is too great diſparity, or for natural diſability or impediment or ſuch like. Seventhly, defloured of her Virginity.

The fourth kind of diſparagement was propter jacturam privilegii, &c. as to marry the heir to a widow whereby he ſhould by reaſon of the Bigamie have loſt the benefit of his clergy, whereby he might ſave his life, but now the exception of Bigamie in that caſe is ouſted by the (d) ſtatute. And Littleton ſaith, that there be many other diſparagements which are not ſpecified in the ſaid ſtatute, for thoſe two mentioned are put but for example. In a word, it muſt be competens maritagium abſque diſparagatione.

1.E.6.cap.12.

(d) Vide Sect.109. F.N.B.149.

¶ *Si talis heres fuerit infra* 14. *annos, & talis ætatis quod matrimonio conſentire non poſſit, &c.* Note albeit the ward where he is diſparaged may diſagree at his age of fourteen years, yet the law doth ſo abhor the odious dealing of the Gardian, to whom the cuſtody of the heir is committed, and his horrible profanation of honourable marriage, the only ligament of mens Inheritances, as it inflicteth a great puniſhment upon the Lord in this caſe, albeit the marriage be not perfect, but avoydable by diſagreement.

¶ *Tunc ſi parentes illi conquerantur.* Littleton in the next Section expounded theſe words in this manner, viz. Si parentes conquerantur, i. e. Si parentes inter eos lamententur, quæ eſt tant a dire, quæ ſi les Coſens de tiel infant ont cauſe de faire lamentation ou complaint pur le hont fait lour Coſen iſſint diſparage, quel eſt in manner un hont a eux. Parens eſt nomen generale ad omne genus cognationis. See more of this in the next Section.

¶ *Dominus amittat cuſtodiam illam uſque ad ætatem hæredis & omne commodum quod inde receptum fuerit convertatur ad commodum hæredis, &c.* Here followeth the penalty.

Firſt, amittat cuſtodiam, that is, the whole benefit of the wardſhip. But in this caſe if the Gardian hath granted the wardſhip of the land to another bona fide, and after, the heir is diſparaged, the Grantee ſhall not forfeit his Intereſt, for the Statute is (Dominus amittat cuſtodiam.)

Secondly, Et omne commodum quod inde receptum fuerit convertatur ad commodum hæredis ſecundum diſpoſitionem parentum. Theſe words are expounded by Littleton which need no further explanation: Now where Readers upon this ſtatute have put a caſe, that if the Tenant hath iſſue a daughter, his wife enſeint with a ſon and dieth, the Lord doth diſparage the daughter before the age of twelve years, the ſon is born, the daughter diſagrees, the ſon dieth, the daughter within the age of fourteen, ſhe ſhall be in ward again. This caſe is not warranted by this ſtatute, for this ſtatute extends not to the heirs female.

Vide the ſecond part of the Inſtitutes. Merton cap.5.6. 35.H.6.53.

If the Tenant make a leaſe to A. for life, the remainder to B. in fee, the Tenant for life ſurrenders upon condition, B. dieth his heir within age, the Lord diſparages the heir, Tenant for life entreth for the condition broken and dieth, the heir ſhall be out of ward, for that he claimeth as heir to one man. But if after the diſparagement, lands deſcend from another Anceſtor to the ward ſo diſparaged, he ſhall be in ward for thoſe lands.

If two Joyntenants be of a ward, and the one diſparageth the heir, both ſhall loſe the wardſhip, for the words be & omne commodum, &c.

¶ *Si autem fuerit* 14. *annorum & ultra, &c. nulla ſequatur pœna.* By which it appeareth (as Littleton obſerveth) that there is no diſparagement but when the ward is married within the age of fourteen.

Britton, fol.169.acc.

Sect. 108.

9.E.3.

¶ *Eſtatute de magna Charta.* Though it be in form of a

¶ Nota que il ſoloit eſtre queſtion, coment ceux

NOte, it hath been a queſtion, how theſe words ſhall be pa-

parolx ſerront entendes, Si parentes conquerantur, &c. * Et il ſemble a aſcuns q̃ conſideront leſtatute de Magna Charta que voit, Quod hæred' maritentur abſq; diſparagatione, &c. Sur quel cel Statute de Merton ſur tiel point eſt foundue, Que nul action poit eſtre pꝛis ſur cel ſtatute, entant que il ne fuit unques view ne oye, q̃ aſcun actiõ fuit pozt ſur cel ſtatute de Merton p cel diſparagement enbꝛes le gardeine pur ceſt matter abandit, &c. Et ſi aſcun action puiſſoit eſtre pꝛile ſur tiel matter, il ſerra entendue aſcun foitz eſtre miſe en ure. * Et nota que ceux parolx, ſerront entendes, Si parentes conquerantur, id eſt, ſi parentes inter eos lamententur, que eſt taunt adire, que ſi les couſins de tiel enfant ont cauſe de faire lamentation ou complaint enter eux pur le hont fait a lour Couſin iſſint diſparage, que eſt en maner un hont a eux, donques puit le pꝛochein couſine a que

underſtood. *Si parentes conquerantur.*) * And it ſeemeth to ſome who conſidering the ſtatute of *Magna Charta*; which willeth, *Quod hæredes maritentur abſque diſparagatione, &c.* Upon which, this ſtatute of *Merton* upon this point is fonded, That no action can be brought upon this ſtatute, inſomuch as it was never ſeen or heard, that any action was brought upon the ſtatute of *Merton* for this diſparagement againſt the gardian for the matter aforeſaid, &c. And if any action might have been brought for this matter, it ſhall be intended that at ſome time it would have been put in ure.* And note that theſe words ſhall be underſtood thus, *Si parentes conquerantur, id eſt, ſi parentes inter eos lamententur*, which is as much to ſay, as if the Couſins of ſuch infant have cauſe to make lamentation or complaint amongſt themſelves, for the ſhame done to their Couſin ſo diſparaged, which in manner is a ſhame to them, then may the next Couſin to whom the

charter, yet being granted by aſſent and authority of Parliament, Littleton here ſaith it is a ſtatute. Vide Lib.8. the Princes caſe.

This Parliamentary charter hath divers appellations in law. Here it is called Magna Charta, not for the length or largeneſs of it (for it is but ſhort in reſpect of the charters granted of private things to private perſons now adays deſug (Elephantinæ Chartæ) but it is called the great charter in reſpect of the great weightineſs and weighty greatneſs of the matter contained in it in few words, being the fountain of all the fundamental laws of the Realm, and therefore it may be ſaid of it, that it is magnum in parvo. It is in our books called Charta libertatum, & Communis libertas Angliæ, or Libertates Angliæ. Charta de libertatibus, Magna Charta, &c. And well may the laws of England be called Libertates, quia liberos faciunt. Magna fuit quondam magnæ reverentia Chartæ. Bracton, 414. & 291. Fleta, lib.2.cap.48. & lib.3.cap.3. Mirtor, cap.2.ſect.18. Britton, fol.177.b.

This ſtatute of Magna Charta, is but a confirmation or reſtitution of the common law, as in the Statute called Confirmatio chartarum, Anno 25. E. 1. it appeareth by the opinion of all the Juſtices; and in 5. H. 3. tit. Mord. 53. Magna Charta is there vouched, for there it appeareth, that King John had granted the like charter of renovation of the ancient laws. 25.E.1. 5.H.3.Mord.53. Matth.Paris,246.247. 248.

This ſtatute of Magna Charta hath been confirmed above 30. times, and commanded to be put in execution. By the ſtatute of 25. E. 1. cap. 2. Judgments given againſt any points of the charters of Magna Charta, or Charta de Foreſta are adjudged void. And by the ſtatute of 42.E.3.c.3. If any ſtatute be made againſt either of theſe charters it ſhall be void. 25.E.1.cap.2. 42.E.3.ca.1.

¶ *Sur leſtatute de Magna Charta leſtatute de Merton eſt foundue ſur*

tiel point, viz. Quod hæredes maritentur absque disparagatione.

¶ *Foundue.* So as Magna Charta is the foundation of other Acts of Parliament. This Act extendeth as well to females as to males.

¶ *Nul action poet este prise sur cel statute, intant que il ne unques fuit view ou oye, &c. Et si uscun action puissoit este prise sur ceste matter il serra intend a ascun foits estre mise in ure.*

lenheritage ne puit discender, enter & ouster le Gardeine en Chivalrie. Et sil ne voile, un auter cousin del enfant poit ceo faire, & les issues & profits prender al use del enfant, & de ceo render accõpt al enfant, quant il vient a son plein age: ou autermẽt lenfant deins age poit enter luy meisme, & ouster le gardein, &c. Sed quære de hoc.

inheritance cannot descend, enter and ouste the Gardein in Chivalry. And if he will not, another Cousin of the Infant may do this, and take the issues and profits to the use of the Infant, and of this to render an account to the Infant when he comes to his full age: or otherwise the Infant within age may enter himself and ouste the Gardein, &c. *Sed quære de hoc.*

Vide Petitiones coram Domino rege in Parliamento, fol. 3. 18. E. 1. 39. H. 6. 39. per Ashton. 6. Eliz. Dyer, 229. 23. Eliz. Dyer. Nullum breve derrore de judicio in 5. port. quia nullum breve reperitur. 3. E. 3. 50. 11. H. 4. 7 & 28. Vid. Iestatute de Marlebridge, cap. 17. In custodia parentum.

Hereby it appeareth how safe it is to be guided by judicial Presidents the Rule being good, Periculosum existimo quod bonorum virorum non comprobatur exemplo. And as usage is a good Interpreter of laws, so non usage where there is no example is a great intendment, that the law will not bear it; for saith Littleton, If any Action might have been grounded upon such matter, it shall be intended that sometime it should have been put in ure. Not that an Act of Parliament by non Use can be antiquated or lose his force, but that it may be expounded or declared how the Act is to be understood.

¶ *Si parentes conquerantur.* Of this sufficient hath been said before.

¶ *Si les Cousins.* Here Littleton expounds Parents to be his cousins, under which name of cousins Littleton includeth uncles and other cousins, who when the father is dead are in loco parentum.

¶ *Ont cause a faire lamentation, &c.* Note if they have cause to make lamentation, it sufficeth though they never complain.

¶ *Pur le hont fait a lour cousin.* For when their cousin is disparaged in his marriage, it is not only a shame and infamy to the heir, but to him to all his blood and kindred.

¶ *Dounques poit le procheine cousin a que le enheritance ne poit discender enter & ouster le Gardein in Chivalrie.*

This is worthy the observation, for the words of the statute are general, Secundum dispositionem parentum, and the construction thereof shall be according to the reason of the common law, for the next cousin to whom the Inheritance cannot descend, shall enter and ouste the Gardian, and shall be in place of a Gardian, as it is in case of a Gardian in socage.

¶ *Et sil ne voile, un auter cousin del enfant poet ceo faire.* Still pursuing the reason of the common law in case of Gardian in socage.

¶ *Et les issues & proffits prender al use del enfant, &c.* This is so evident as it needeth no explication.

¶ *Ou autermẽt lenfant deins age poit enter luy meisme & ouste le gardein.* If none of the cousins aforesaid will enter, then the heir himself may enter. In all which the reason of the common law is pursued. But what if the heir be disparaged and the next of Kin doth enter, and when the heir commeth to 14. he agreeth to the marriage? yet shall not this give any advantage to the Lord, for that he had lost the wardship before.

Sect.

Sect. 109.

¶ Of this ſufficient hath been ſaid before.

ITem multz auters diverz diſparagements y ſont, que ne ſont ſpecifies en meſme leſtatute. Come ſi lheire que eſt en gard eſt mary a un q̄ nad forſq̄ un pee, ou forſq̄ un main, ou que eſt deforme, decrepite, ou ayant horrible diſeaſe, ou graund & continual infirmitie: Et (ſi ſoit heire male) ſi ſoit marry a feme que eſt paſſe lage denfanter. Et multz auterz cauſes de diſparagements ſont, Sed de illis quære, car il eſt bon matter dappzender.

ALſo there be many & divers other diſparagemẽts, which are not ſpecified in the ſame ſtatute. As if the heir which is in Ward be married to one which hath but one foot, or but one hand, or which is deformed, decrepit, or having ſome horrible diſeaſe, or great and continual infirmity. And (if he be an heir male) if he be married to a woman paſt the age of child-bearing. And there be other cauſes of diſparagement, but inquire of them, for it is a good matter to underſtand.

Sect. 110.

ET des heires maleſ que ſont deins lage de 21. ans apres le mozt lour auceſtor nient maries, en tiel cas le ſr̄ avera le mariage de tiel heire, & avera temps & ſpace de tender a luy conbenable mariage ſans diſparagem̄ent deins ī le temps de 21. ans. Et eſt aſcaboir, que lheire en tiel caſe poit eſlier ſil boit ẽe marry ou non, mes ſi le Sr̄ que eſt appel gardein en chibalry a tiel heire tender cobẽabl mariage deins lage de 21. ans ſans diſparagement, & lheire ceo refuſe, & ne ſoit mar-tie deins le dit age,

AND of heirs males which be within the age of 21. years after the deceaſe of their Anceſtor and not married, in this caſe the Lord ſhall have the mariage of ſuch heir, and he ſhall have time and ſpace to tender to him covenable mariage without diſparagemẽt within the ſaid time of 21. years. And it is to be underſtood, that the heir in this caſe may chuſe whether he will be married or no, but if the Lord which is called guardian in chivalry tenders to ſuch heir covenable marriage within the age of 21. years without diſpa-

¶ *De tender a luy covenable mariage, &c.* But it is in the election of the Lord, whether for the ſingle value the Lord will tender a mariage or no, for he ſhall have the ſingle value without any tender. Lib.6.fol.70. Lord Darcies caſe. Vid.Britton, fol.169.

And of this there needeth no other explication. The value of the mariage of ſuch an heir is according to the valuation by lawful trial, or as much as another had before offered to give for the ſame without fraud and covyn. Merton, cap. 6 18.E.3.18,

¶ *Le heire en tiel caſe poit eſlier ſil voit eſte marrie, ou non, &c.* And ſo on the other ſide, though there be a tender made of a covenable marriage without diſparagement, yet the heir may refuſe, for in every marriage there

there must be a free consent.

¶ *Si tiel heire.* That is, if such an heir to whom a tender hath been made by the Lord, and by whom a refusal hath been made; if such an heir afterwards marrieth another within age, he shall forfeit double the value, but if he before any tender marrieth himself within age, he shall pay but the single value of the marriage.

Neither the single value nor the double value shall be recovered against the heir, but after his full age; but for both these the Lord hath a double remedy, viz. an Action as is aforesaid, or the Lord may retain the land after full age for his satisfaction of both with this difference, that in the case of the single value the taking of the profits shall not be accounted parcel of the value, but as a gage or pledge till the heir do satisfie him of the single value; but in case of the double value, the perception of the profits shall be taken in satisfaction of the double value, for the statute of Merton which giveth the forfeiture saith, Dominus teneat terram, &c. per tantum tempus quod inde percipere possit duplicem valorem maritagii: which words (quod inde, &c.) prove that the taking of the profits shall go in satisfaction: but in case of the single value, until the heir doth satisfie the Lord of the same.

Stat. de Merton. cap. 6. 2.E.2.acc.sur lestat.43. 3.E.2.ibid.27. 16.E.3.ib.14.18.E.3.18. Temps E.1.acc.sur.lestat 43.E.3.21.27.H.8.4. Statut. de Merton, cap. 7. 35.H.6.tit. gard.71. Lib. 6.fol.71. Lord Daries case.

No forfeiture of marriage is given by the said statute of Merton, of an heir female, as appeareth by the said Act; neither at the common law could the Lord have holden the land of the heir female after fourteen years for the value.

Donques le gardeine aūra le value del mariage del tiel heire male, mes si tiel heire luy ñ marie deins lage de 21. ans encounter la volunt le gardeine en chivalrie, donq; le gardein aūa le double value del mar per force de lestat de Merton avantdit come en ñ lestat est compriſe pluis a pleine.

rageth, & the heir refuseth this, and doth not marry himself within the said age, then the Gardein shall have the value of the marriage of such heir male, but if such heir marieth himself, within the age of 21. years against the will of the Gardein in Chivalry, then the Gardein shall have the double value of the marriage by force of the statute of *Merton* aforesaid, as in the same statute is more fully at large comprised.

Sect. III.

Lib.4.fol.88. in Lutterels case. Lib.6.fol.20.2. Gregories case. 19.R.2.gard.195.

¶ PEr *Castle gard.* *Wardum castri, seu castle-gardum, seu castri-gardum.* He that holdeth by castle-gard, holdeth by Knights service, but not by Escuage, for Escuage is due when the King maketh a Voyage Royal out of this Realm (as hath been said) and the Tenant maketh default, but castle-gard is to be done within the Realm, & without any Voyage Royal.

Also a certain tearm is appointed for the service of the Tenant that holdeth by Escuage, but no certain tearm by law for him that holdeth by castle-gard. Vide in the Title of Grand Serjeanty. Sect. Yerror come

¶ Item divers tenants teignont de lour Seigniorz p̄ service de chivaler, & uncore ils ne teignont per Escuage, ne paieront escuage, come ceux que teignont de lour Seigniorz per castle garde, cestalcaboire, a garder un tower del castle lour Seignior, ou un huis ou un auter lieu del castle per reasonable garnishment, quant lour Seigni-

Also divers tenants hold of their Lords by Knights service, & yet they hold not by Escuage, neither shall they pay Escuage. As they which hold of their Lords by Castle-ward; that is to say, to ward a Tower of the Castle of their Lord, or a door or some other place of the Castle upon reasonable warning, when their Lords hear that the enemies will come

oꝛs oyont que enemies voylent vener, ou sont venus en Engleterre. Et en pluſoꝛs autres caſes home poit tener per ſervice de chivaler, & uncoꝛe il ne tient per eſcuage ne payera eſcuage, ſicome ſerra dit en le tenure per Graund Serjeantie. Mes en touts caſes ou home tient per ſervice de chivaler, tiel ſervice trait all feignioꝛ gard & mariage.

or are come in England. And in many other Caſes a man may hold by Knights ſervice, and yet he holdeth not by Eſcuage, nor ſhall pay Eſcuage as ſhall be ſaid in the tenure by Grand Serjeantie. But in all Caſes where a man holds by Knights Service, this Service draweth to the Lord ward and mariage.

Caſtellani, oꝛ Conſtabularii caſtri foꝛ Keepers oꝛ Conſtables of a Caſtle.

Vide Mag.Chart.cap.19. 20.W.1.cap.7.Bract. lib.5.fol.363.Fleta lib. cap.43.

¶ *A garder un tower del Caſtle, &c.* A Tower, oꝛ a Dooꝛ, oꝛ a Bꝛidge, oꝛ a Sconce, oꝛ ſome other certain part of the Caſtle, foꝛ the tenure muſt be certain. And this maybe dont by the Tenant himſelf oꝛ his Deputy.

Magna Charta cap.20.

¶ *Del Seignior.* Foꝛ it cannot be of a Caſtle of another.

Loꝛd and Tenant by Caſtle-gard the Loꝛd graunteth over his ſeignioꝛy to another, (a) the Caſtlegard is gone becauſe the Grantee hath not the Caſtle. (b) Foꝛ the ſame reaſon it is, that if one holdeth of me, as of my Mannoꝛ of D. by fealtie and ſuit of Court, if I grant over the ſervices of this Tenant, the ſuit is gone becauſe the grantee hath not the Mannoꝛ. (c) But if the Caſtle be wholly ruinated, Si Caſtrum ſit penitus dirutum, yet the tenure remaineth by Knights ſervice, and it goeth in beneſit of the Tenant, as to the garding of the caſtle until it be redified. But Ward and Mariage belongeth to the Loꝛd in the mean time. Foꝛ Littleton in the end of this Section putteth it foꝛ a general rule in all caſes where a man holdeth by Knights ſervice it dꝛaweth Ward and Mariage.

(a) Temps E.2.tit.Aſſ. 299.31.E.1.tit.Aſſ.441. (b) 17.E.3.65,72. 4.E.3.42.

(c) Lib. 4.fol.88. Luthrel.caſe. 3.H.8.Bendloes,Capels caſe. 4.E.3.55.

If the Tenant make default in garding of the caſtle, the Loꝛd may diſtrein foꝛ it, and recover ſatisfaction in dammages.

¶ *Per reaſonable garniſhment.* This warning muſt be given by the Loꝛd oꝛ ſome other foꝛ him, and the Tenant need not ſtirr until he have ſuch warning.

¶ *Enemies.* Which is to be underſtood of any manner of Enemies whatſoever. And thoꝛugh Littleton ſpeaks of enemies, yet it ſeemeth that to keep a caſtle in time of Inſurrection and Rebellion (albeit in pꝛopꝛiety of ſpeech Rebels are no Enemies) is a tenure by Knights ſervice. Vide Hill. 8.E.1.Midd.Rott.86.

¶ *Voylent vener.* Foꝛ pꝛeparation is to be made upon warning befoꝛe the Enemy be come indeed into England. This appeareth to be in time of hoſtility and war, oꝛ foꝛ pꝛeparation thereunto. But a tenure to keep a caſtle in time of peace only is no Knights ſervice.

If the Tenant by Caſtle-gard do ſerve the King in his war, he ſhall be diſcharged againſt the Loꝛd, accoꝛding to the quantity of the time that he was in the Kings hoſt.

Fleta ſpeaketh of an old woꝛd called Wardwite, and (ſaith he) ſignificat quietanciam miſericordiæ in caſu quo non invenerit quis hominem ad Wardam faciendam in caſtro.

Fleta lib.1.cap.43.

Sect. 112.

ET ſi un tenant que tiēt de ſon ſeignioꝛ per ſervice de entier fee de chivaler moꝛuſt, ſon heir doingz eſteant de plein age .ſ. de 21. ans,

AND if a Tenant which holdeth of his Lord by the ſervice of a whole Knights fee dieth, his heir then being of full age, s. of 21. years, then

¶ *Reliefe, relevium.* This woꝛd is deriued from the oꝛiginal befoꝛe.

Vide Sect.103.

Nota, Relief (a) is no ſervice, but an improvement of the ſervice, oꝛ an incident to the ſervice, foꝛ the which the Loꝛd may diſtrein but cannot have an Action of Debt,

(a) Temps E.1.reliefs 13. 41.E.3.22. 4.E.2.avewry 220. 7.H.6.13. 22. H.8.Rot.528. 34.E.1.avowrie.239.

but

but his Executors or Administrators may have an Action of Debt, and cannot distrain.

donque le Seignior avera C. s. pur reliefe, & del heire celuy que tient per le moitie dun fee de chivaler L. s. & de celuy que tient per quart parts fee dun chivaler 25. s. & sic que pluis, pluis, & que meins, meins.

the Lord shall have C. s. for a relief, and of the heir of him which holds by the moity of a Knights fee 50. s. and of him which holds by the fourth part of a Knights fee 25. s. and so he which holds more, more, and which less, less.

(b) Stat. de 1. E. 2. de militibus. Vide lib. 9. fol. 124. Anth. Lowes case.

And it (b) is to be understood that feodum militis, a Knights Fee, consisteth of twenty pound land, and he payeth for his relief for a whole Knights fee, the fourth part of his fee, viz. five pounds, and so according to the rate.

Baronia, a Baronie, or a Barons Fee consisteth of thirteen Knights fees, and the third part of a Knights fee, which amounts to four hundred Marks per annum, and the Baron for an entire Barony payeth for his relief an hundred Marks, which is the fowrth part of the value of his Barony.

Comitatus, an Earldom, or an Earles fee consisteth of a Barony, and the third part of a Barony, which includeth twenty Knights fees amounting to four hundred pound land per annum, and he payeth for his relief for an entire Earldom the fourth part of his revenue, and that is an hundred pound. All which appeareth by the Statute of Magna Charta cap. 2. made in the ninth of Henry the third, at which time there was neither Duke, Marquess nor Viscount in England, as before is said. But there be presidents in the Exchequer, that a Dukedom consisting of two Earledoms, viz. eight hundred pound land by the year, payeth two hundred pound, and a Marquess consisting of two Baronies, viz. eight hundred Marks land per annum, and of an Earledom and a half, payeth two hundred Marks for his relief. What the Viscount should pay in certain I have not heard. Before the making of the Statute of Magna Charta the King had rationabile relevium of Noblemen, and it was not reduced to any certainty, yet ought it to have been reasonable and not excessive.

Glanvil. lib. 9. cap. 4. 9. Bracton lib. 2. fol. 83. Britton fol. 178. Ockam 42. F. N. B. 83. 256. Fleta lib. cap. 17. Magna Charta cap 2. Vide Bracton fol. 84. 12. H. 4. in recordo longo. 20. H. 7. 19. 28. E. 3. Ass. 122. tit avowrie. 126. 18. Ass. pl. ultimo. 22. E. 3. 8.

I have seen the Record of a Charter made in 20. H. 6. to Henry Beauchampe, Earle of Warwick, whereby he was created King of the Ile of Wight, to him and the heirs males of his body, his title was incertain, and not limited by the statute of Magna Charta.

It is to be observed that the words of the Statute of Magna Charta be Hæres Comitis de Comitatu integro, & hæres Baroniæ de Baronia integra, &c. Now what an entire Earldom, and an entire Barony is hath been declared before.

It is also to be observed that at and before the Statute of Magna Charta, all Earldoms and Baronies were derived from the Crown, and were holden of the King in Capite, and the King would not suffer them to be divided, or severed. And such entire Earldoms, and entire Baronies are within the Statute, but at this day Earls and Barons are without such Earldoms and Baronies of the Kings gift in chief. For at the creation of an Earl, he hath sometimes an Annuity granted unto him, and sometime nothing, so as such Earls and Barons so created, are clearly out of the Statute of Magna Charta, and are to pay such reliefs as other men that hold of the King in Capite. For as the heir of a Knight shall not pay relief unless he hath a Knights fee, &c. so neither the Earle nor Baron shall pay any relief by this Statute, unless he hath an Earldom, or Barony, &c.

16. E. 3. Eschange 2. 46. E. 3. forfeiture 18.

¶ *Son heire de pleine age s. de 21. ans.* And yet in some case the heir shall pay relief when he was within age at the time of the death of his Ancestor. As if a man holdeth lands of the King by Knights service in capite, and of a common person other lands by Knights service, and dieth his heir being within age, the King hath all in Ward by his Prerogative until the full age of the heir. In this case the heir shall pay relief to the other Lord, for that the King hath the wardship of body and lands. And the Lord upon every Distent ought to have either wardship or relief.

24. E. 3. 24. 26. H. 8. 30. H. 8. cap. 2. in fine.

But if there be Lord and Tenant by Knights service, and the Tenant dieth, his heir being within age, the Lord waiveth his wardship as he may, and taketh himself to his Seignior, in this case the Lord shall not have relief at his full age, because he might have had the wardship of the body and land. Lord and Tenant of two Mannors by divers tenures by Knights service, the Tenant is disseised of the one, and the Disseisor dieth seised, and the Tenant dieth seised of the other his heir within age, the Lord seised the body and lands of that Mannor and after the heir at his full age recovereth the other Mannor against the heir of the Disseisor, he shall pay relief for that Mannor, and so one Lord of the heir of one Tenant shall have both wardship during his minority and relief at his full age.

1. E. 3. 6. Pl. Com. 229. 33. E. 3. tit. gard. Stathom.

An

¶ *Son heire.* (k) And yet the ſucceſſor of a Biſhop or Abbot may pay relief by preſcription or grant.

If the Tenant intendeth his heir apparent by colluſion, and dieth, (l) his heir of full age, it is a queſtion in our books, whether he ſhall have relief either by the Common law, or by the ſtatute of Marlebridge, ca. 6. But now the ſtatute (m) of 13. Eliz. ca. 5. hath cleared that queſtion, and that the Lord ſhall have relief where the conveyance is made to any perſon by colluſion, &c.

(k) 3.E.3.13.76. 8.R.2.relief, 14. 3.H 4.2. 2.E.3. avowrie, 124. (l) 39.E.3.tit.Relief. 24.E.3. 24.E.3.Relief 11 Bracton. lib.2.85. (m) 13 Eliz.cap.5.

Sect. 113.

This is evident, and needeth no explanation.

¶ Item home poit ten̄ ſon tre de ſon Sñr per le ſervice de deux fees de chivaler, & donque lheire eſteant de pleine age al tẽps de mort ſon auncestre paiera a ſon Sñr x.l. pur reliefe.

Alſo a man may hold his lād of his Lord by the ſervice of two Knights fees, & thē the heir being of full age at the time of the death of his anceſtor ſhal pay to his Lord x. pound for relief.

Sect. 114.

¶ Nota ſi ſoit aiel, pier, & fits, & ſa meze mourſt vivant le pier de le fits & puis latel que tient ſa terre p ſervice de Chivaler mourſt ſeiſie. & ſa terre diſcendiſt al fits la mere, come heire al aiel q̄ eſt deins age: en teſt cas le Sñr avera le garde de la terre, mes nemy le garde del corps del heire, pur ceo que nul ſerra en gard de ſon corps a aſcun Sñr vivant ſon pier pur ceo que le pier durant ſon vie avera le mariage de ſon heire apparant, & nemy le Sñr. Auterment eſt ou le pier eſt mort vivant la mere, lou le terre tenus en Chi-

NOte, if Grandfather, father and ſon, and the mother dieth living the father of the ſon, and after the grādfather which holds his land by Knights Service dieth ſeiſed, and his land deſcend to the ſon of the mother as heir to the grandfather, who is within age: In this caſe, the Lord, ſhall have the Wardſhip of the lād, but not of the body of the heir, becauſe none ſhall be in ward of his body to any Lord, living his father, for the father during his life ſhall have the marriage of his heir apparent, & not the lord. Otherwiſe it is where the father dieth living the mother,

Fitz Yet the father ſhall have the mariage of his Daughter if ſhe be his heir apparent, and Littletons reaſon extendeth to the Daughter, for that (ſaith he) the father ſhall have the Wardſhip of his heir apparent, within which words the Daughter is included, ſo long as ſhe continueth heir apparent.

Fleta lib.1.cap.5. 16.E.3.diſſeiſin 6. 21.E.1.gard.154. 8.E2. treſp. 235. F.N.B.143. Ambroſia Gorges caſe. lib.6. fol. 22.

¶ *Le ſeignior avera le gard del terre.* Note that albeit in this caſe the law doth give the cuſtody of the body to the father, & barreth the lord thereof, yet the lord ſhall have the wardſhip of the land by force of the tenure at the firſt creation thereof. And ſo it is if the father marrieth his heir within age & dieth, yet the lord ſhall have the wardſhip of the land.

¶ *Vivant ſon pier:* This doth not extend to any collateral heir, but only to the ſon or daughter being heir apparent; for albeit a man ſhall have an action of treſpaſs, Quare conſanguineum & hæredem cœpit, and albeit the words be Cujus maritagium ad ipſum pertinet, becauſe the will beſtowing of his

9.E.2.18.E.3.25,29. Aſſ.35. 29.E.3.37. 31.E.3. barr.237.

32.E.2.Gard.32.
30.E.3.17.
21.H.6.55. 12.H.4.16.
F.N.B. 143. 31.E.3.
Br.357.9.E.4.53.

his heir apparent in marriage is a great eſtabliſhment of his houſe, yet that is to be underſtood as againſt a wrong-doer but not againſt a gardian in Chivalrie, and the mother

valrie diſcendiſt al fits de part ſon pier, &c.

where the land holde in Chivalrie deſcends to the ſon on the part of the father, &c.

ſhall have the like writt for taking away of her ſon and heir apparent: and yet the mother ſhall not bar the Lord by Knights ſervice, of his wardſhip of the body, as Littleton here ſaith, Qui tamen ex filia naſcitur in poteſtate tua non eſt, ſed patris ejus.

Vide Flet.lib.1.cap.6.
Bee W.2.c.35.

¶ *A aſcun ſeignior.* Put the caſe there is Lord, & Feme Tenant by Knights Service of a Carve of land, the Feme maketh a feoffement in fee upon condition, and taketh the Lord to husband, and hath iſſue a ſon, the wife dieth, the iſſue entreth for the condition broken, the lord entreth into the land as Gardene by Knights ſervice, and maketh his Executors, and dieth: in this caſe the Executors ſhall have the wardſhip of the land during the minority of the heir, but not the wardſhip of the body; for albeit the lord ſeemeth to have a Double intereſt in the wardſhip of the body, one as lord, and another as father, yet as father, and not as lord in judgment of law, he ſhall have the wardſhip of the body of his ſon and heir apparent, in reſpect of nature, which was before any wardſhip in reſpect of Seigniories by Knights ſervice began, and that wardſhip by reaſon of nature cannot be waived, & claime made in reſpect of the Seigniory. And the Executors of the father ſhall not have ſuch a wardſhip which the Teſtator had as father, neither can ſuch a wardſhip be forfeited by outlawrie, becauſe it is due to the father in reſpect of the privity of nature.

39.H.6.55.lib.7.fol.13. in Calvins caſe.
Vide Flet lib.1.c.12.ſect. eum Patr. de feodo, &c.

¶ *De ſon heire apparent.* And therefore if the Father be attainted of Felony, &c. then cannot the ſon or daughter be an heir apparent, becauſe the blood is corrupted between them, and conſequently in the life of the father, his ſon in that caſe ſhall be in ward.

A woman ſeiſed of lands in fee holden by Knights Service, taketh husband an Alien, and hath iſſue, and the wife dieth, the iſſue ſhall be in ward, and the father ſhall not have the cuſtody of him, for that in the eye of the law he is not his heir apparent, as Littleton here ſpeaketh.

Sect. 115.

This Section is an addition to Littleton, and therefore I paſs it over; and the rather for that the ſaid Statute of 3. H. 7. is become of no force, for that by the ſtatute of 27. H. 7. cap. 10. all uſes are transferred into poſſeſſion.

¶ **NOta, ſi home ſoit ſeiſie de Terre que eſt tenus per ſervice de Chivaler, & fait feoffment en fee a ſon uſe, & mozuſt ſeiſie del uſe, ſon heire deins age & nul volunt per luy declare, le Seignior avera Briefe de droit de gard de corps, & del Terre, ſicome Tenant uſt debie ſeiſie del demeſne. Et ſi le heire ſoit de pleine age al temps del mozant ſon anceſtor, en tiel caſe il payera reliefe, ſicome il fuiſſoit ſeiſie del demeſne. Et ceſt per leſtatut de anno 4. H. 7. cap. 17.**

NOte that if a man be ſeiſed of land wich is holden by Knights ſervice, & maketh a feoffment in fee to his own uſe, & dieth ſeiſed of the uſe, his heir within age, & no will declared by him, the lord ſhall have a writ of Right of the wardſhip of the body & land, as if the tenãt had died ſeiſed of the demeſne. And if the heir be of full age at the time of the deceaſe of his Anceſtor, in this caſe he ſhall pay relief as if he had been ſeiſed of the demeſne. And this is by the ſtatute of 4. *H.7. cap.17.*

Sect.

Sect. 116.

¶ Nota, il y ad Gardein en droit en Chivalrie, & Gardein en fayt en Chivalrie. Gardein en droit en Chivalrie est, lou le Seigniour per cause de son Seigniozie, est seisie de gard de Terres & del heyze, ut supra. Gardein en fait en Chivalrie est, lou en tiel case le Seigniour apres son seisin graunt per fayt ou saung fayt le Gard des Terres ou del heire ou dambideux a un auter. Per force de quel graunt le Grauntee est en possession, donque est le Grauntee appel Gardeine en Fait.

NOte, there is Gardian in right in Chivalrie, and Gardian in Deed in Chivalrie. Gardian in Right in Chivalrie is, where the Lord by reason of his Seigniory is seised of the Wardshipp of the Lands, and of the Heir, *ut supra*. Gardian in Deed in Chivalrie is, where in such case the Lord after his Seisin grants by Deed or without Deed, the Wardship of the Lands, or of the Heir, or of both, to another, by force of which grant the Grauntee is in possession, then is the Grauntee called Gardian in Fait, or Gardian in Deed.

¶ HEre Littleton divideth Gardian in chivalrie, into Gardian in Right, and Gardian in Fait. And this is evident, and needeth no explanation.

¶ *Per fait ou saunz fait.* Here Littleton affirmeth, That the wardship of the body may be granted over without Deed, and herein note a diversity between an original Chattel of a thing that properly lyeth in grant, and a chattel derived out of a Freehold of any thing that lieth in grant. As for example, if a man make a Lease for years of a Villein, this cannot be done without deed, neither can the Lessee assigne it over without deed, because it is derived out of a Freehold that lyeth in grant: but the wardship of the body is an original chattel, during the minority derived out of no Freehold, and therefore as the Law createth it without deed, so it may be assigned over without Deed.

12.E.3.tit.Grant.59. 7.E.3.63.26.E.3.65. 28.E.3.96. 14.E.3.Acc. fur Left.17. 25.E.3.40. 31.E.3.Vouch.5. 46.E.3.25. 20.E.4.16. 12.H.4.19. 5.H.7.17.36. 22.El.Dyer 361. 35.H.8.Br.tit.Grant.85.

A Corporation aggregate of many cannot make a lease for years without Deed, in respect of the quality of the Incorporation, but their Lesse may assigne it over without Deed.

36.H.8.tit.Grant.B.125. 22.H.6.34. 19.H.6.33.

If an Advowson be holden by Knights service, and the Tenant dieth, his heir being within age, the Lord cannot grant the wardship of the Advowson without Deed, because it is derived out of an inheritance that lyeth in grant, and passeth not by Livery: for Jus præsentandi est incorporale, & so (albeit there be diversity of opinions in our books) is the Law taken at this day.

24.E.3.69.70. 5.E.3.58. 43.E.3.15. 5.H.7.36. 14.H.7.16.15.H.8.8. Bract.368.368.246. 43.E.3.1.6. 5.H.7.37. 11.H.6.4. 6.H.7.3. 38.H.8.16.El. Dyer 358.

CHAP. 5. *Sect.* 117.

Socage.

Mirror ca.1.Sect.3.

4.H.7.ca.19. Lib.4. Tirringhams case. fol.39.& 4.H.7.ca.12.

¶ *Tenure in Socage.* Agriculture or Tillage is of great account, in Law, as being very profitable for the Commonwealth, wherein the goodness of the habit is best known by the privation: For by laying of lands, used in tilth, to pasture; six main inconveniences do daily encrease. First Idleness, which is the ground & beginning of all mischiefs. 2. Depopulation and decay of Towns; for where in some Towns 200. persons were occupied, and lived by their lawful labors, by converting of tillage into pasture, there have been maintained but two or three heardmen: And where men have been accounted sheep of Gods pasture, now become sheepmen of these pastures. 3. Husbandry, which is one of the greatest commodities of the Realm, is decayed. 4. Churchs are destroyed, and the service of God neglected by diminution of Church livings, (as by decay of tythes, &c.). 5. Injury and wrong is done to Patrons and Gods Ministers. And 6. The defence of the Land against forrain enemies is enfeebled and impaired, the bodies of husbandmen being more strong and able and patient of cold, heat, and hunger, than of any other.

¶ Enure en Tocage est, lou le tenant tient de son seignior son tenemẽt p certeine service pur touts mãers de services, issint que les services ne sont pas services de chyvaler: Sicome lou home tient son terre de son seignior per fealtie & per certeine rent p touts maners de services, ou lou home tient p homage & fealtie & certeine rent pur touts maners de services, ou lou il tient p hõage & fealty p touts maners de services, car hõage p soy ne fait pas service de chyr.

TEnure in Socage, is where the Tenant holdeth of his Lord the tenancie by certain service for all manner of services, so that the service be not Knights service: As where a man holdeth his land of his Lord by Fealty and certain rent, for all manner of services: or else where a man holdeth his Land by homage, fealty, and certain rent, for all manner of services, for homage by it self maketh not Knights service.

The two consequents that follow of these inconveniences, are first the displeasure of Almighty God, and secondly the subversion of the Policy and good Government of the Realm, and all this appeareth in our books. And the Common law (a) giveth arable land (which anciently is called Hyde & gaine) the preheminency and precedency before meadows, pastures, woods, myns, and all other grounds whatsoever: and * averia carucæ the beasts of the plough have in some cases more privilege than other cattel have. And amongst the Romans Agriculture or tillage was of high estimation, insomuch as the Senators themselves would put their hand to the plough, and it is said, that never prospered tillage better, than when the Senators themselves plowed (such force hath the example of superiors) whereof three famous Romans in their several kinds spake.

(a) 20.E.3.Admesurement 8,14.Ass.2.b4. 24.E.3.25. * Mirror. Bracton fo.217.Fleta lib. 2.ca.41.Regist.orig.97. Ockam 38.29.4.E.3.1.a. 18.E.2.tit.action sur le-stat.45.Temps E.1. Avowry.220. 29.E.3.16.17. Cic.lib.1.offic.

Omnium rerum ex quibus aliquid exquiritur nihil agricultura melius, nihil uberius, nihil dulcius, nihil libero homine dignius.

Virgil.lib.1.Georg.

O Fortunatos nimium, sua si bona norunt
Agricolas, quibus ipsa procul discordibus armis
Fundit humo facilem victum justissima tellus.

Seneca in Epist.

Nullum laborem recusant manus quæ ab aratro ad arma transferuntur, &c. fortior autem miles ex confragoso venit, sed ille unctus, & nitidus in primo pulvere deficit. But now let us peruse our Authors words:

Socagium

¶ *Socagium.* Littleton in this Chapter Section 119. ketcheth this word from the original. Socagium idem est quod servitium socæ, & soca idem est quod caruca, .s. un soke ou un carue.

And Bracton agreeth herewith. Dicitur socagium (saith he) à socco & inde tenentes dicuntur socmanni (b) eo quod deputati sunt tantummodo ad culturam. And Beneth signifieth the service of the Plough and Cart. It is to be observed that in the book of (c) Domesday, Land holden by Knights service was called Tainland, and land holden by Socage, was called Reveland, which appeareth in that it is said there, Hæc terra fuit terra regis Edwardi Taineland sed postea conversa est in Reveland. And in that book they that held in Socage were called by several names, as Sachemanni or Sokemanni, which still continueth: sometime *Coleberti, i.e. qui tenent in liberum socagium per reditum, and sometime they are called Radchenestres, i.e. liberi homines qui tamen arabant, herciebant, falcabant, metebant, &c. And here it appeareth how necessary it is, that words be fetched from their originals, and our Author Est verus Etymologus both in this and in many other places in his (d) three books. And it is to be observed once for all, that the legal termination of (agium) in composition signifieth service or duty, as homagium the service of the man, Escuagium, servitium scuti. (e) Socagium servitium socæ, hidagium the duty to be paid for a hide or plough-land, and so of cornagium, coragium, carnagium, cariagium, burgagium, villenagium, and guidagium, (which one describeth thus) quod datur alicui ut tuto conducatur per loca alterius, and the like.

Bracton lib.2.fol.77.
(b) Glanvil lib.7.cap.9. & 11. & lib.9.ca.4. Fleta lib.1.ca.8. & lib.3. ca.14.& 16. Britton fol.164.
(c) Domesday Herefordsc. Vid.devant Sect.1. Sudru. Wendeford. Westcester sc. *Mich.10.E.3.Coram rege Wilts in Thesaur.
(d) For Etymologies vid. Sect.95.154.164.204. 234.267.268.&c.
(e) Fleta lib.3.ca.14. Bracton lib.2.cap.16. Britton fol.164.
(f) Mirror,ca.2.sect.18.

¶ *Issint quæ les services* (f) *ne sont pas services de Chivaler.* And in the next Section he saith, and every tenure, that is not a tenure in Chivalrie, is a tenure in Socage, Ex donationibus autem feoda militaria vel magnam Serjantiam non continentibus, oritur nobis quoddam nomen generale, quod est socagium. Here Littleton speaketh of Tenures of common person, for grand Serjeantie is not Knights service, and yet it is not a tenure in Socage, as shall be said hereafter. Also he meaneth here temporal services, and not Frankalmoign, as by the examples he put is manifest, and as in his proper place shall appear more at large. Also here Littleton speaketh of socage largely taken, and so called ab effectu, that is, all tenures that have the like effects and incidents belonging to them, as socage hath are termed tenures in socage, albeit originally service of the plough was not reserved: as if originally a Rose, a Pair of gilt Spurs, a Rent, and such like were reserved, or that the Tenants in Condemnatos ultrices manus mittant ut alios suspendio, alios membrorum detruncatione, &c. puniant, these are said to be tenures in socage ab effectu, for that there shall be like Gardein in socage, like relief, and such other effects and incidents as a tenure in socage hath, and are so termed to distinguish the same from Knights service. May the worst Tenure that I have read of, of this kind, is to hold lands to be Ultor sceleratorum condemnatorum, ut alios suspendio, alios membrorum detruncatione vel aliis modis juxta quantitatem perpetrati sceleris puniat, (that is) to be a Hangman or Executioner. It seemeth in ancient times such officers were not Voluntaries, nor for lucre to be hired, unless they were bound thereunto by Tenure. And so note that some tenures in Socage are named à causa, and some and the greater part ab effectu.

Fleta ubi supra.

Ockam,cap.quæ per sola consuetudinem,&c.

Ockam fo.31.a.& b.

¶ *Car homage de soy ne fait service de chivaler.* But it is a presumption where homage is due, that the land is holden by Knights service, as hath been said.

Sect. 118.

¶ Item hõe poit teñ de son sñr per fealty tm, et tiel tenure est tenure en socage. Car chescũ tenure que nest pas tenure in chivalry, est tenure en socage.

ALso a man may hold of his Lord by fealty only, & such tenure is tenure in socage: for every tenure which is not tenure in chivalry is a tenure in socage.

Of this sufficiently hath been said before

Sect. 119.

¶ Et il est dit que la cause pur que tiel tẽure est dit ẽad le nosme de tẽure ẽ socage,

AND it is said that the reason why such tenure is called, & hath the name of tenure in socage,

¶ *Temps de memory.* Time of memory, is when no man alive hath had any proof

proof to the contrary, nor hath any Conuſance to the contrary, as ſhall be hereafter ſaid in his proper place. And of neceſſity this change hereafter ſpoken of muſt be before time of memory for within time of memory the ſervices of the Plough cannot be changed into mony by conſent of the tenant, & the deſire of the Lords, &c. into an annual rent, neither by releaſe or confirmation or other conueyance ſo long as the ſeigniory remaineth, as ſhall be ſaid in his due place.

Cap.burgage.Sect.170.

Mirror.cap.2.ſect.18. Vid.19.E.2.avowry.224. 8.E.2.accon.ſur leſt.24. 10.E.3.24. 20.E.3.avowrie 124. 39.E.3.17.39.Aſſ.p.3. 20.Aſſ.1.

Cap.confirmation. Sect.539.

¶ *Deuoient vener ove lour Sokes.* The Plough is named propter excellentiã but the Sicle, & the Syth, for the reaping in harueſt and ſuch like, are alſo included. For as Carucata terræ, a plough land, may contain Houſes, Mills, Paſture, Medow, wood, &c. as pertaining to the plough, ſo vnder the ſeruice of the plough all ſeruices of Tillage or Husbandry are included.

4.E.3.16.1.6.E.3.283

¶ *Uncore le noſme de Socage demurt.* Although the cauſe whereupon the name of Socage firſt grew be taken away, yet the name remains the ſame it hath been and is vſed to diſtinguiſh this tenure from a tenure by Knights ſeruice.

eſt ceo; Quia ſocagium idem eſt quod ſeruitium ſocæ, & ſoca idem eſt quod caruca, .s. un ſoke ou un carue. Et en ancient temps deuant le limitation de temps de memorie grand part de les tenants que tyendront de lour Seigniors per ſocage, deuoient vener ove lour ſokes, chescun de les dits tenants pur certein iours per an pur arer & ſemer les demeſnes le Seignior, & pur ceo que tielx oberages, fueront fait pur le diner & ſuſtenance de lour Seignior, ils fueront quits enuers lour Seignior, de touts maners de ſeruices, &c. Et pur ceo que tielx ſeruices fueront faits ove lour ſokes, tiel tenure fuit appel tenure en ſocage. Et puis apres tiels ſeruices fueront changes en deniers, per conſent des Tenants & per deſire des Seignior, .s. en un annual rent, &c. Mes uncore le noſme de Socage demurt, & en diuers lieux les Tenants uncore font tiels ſeruices ove lour ſokes a lour Seignior, iſſint que touts maners de tenures q̃ ne ſont pas tenures p̃ ſeruice de chiualer, ſont appels tenurs ẽ ſocage.

is this; becauſe *Socagium idem eſt, quod ſeruitium Socæ*, and *Soca, idem eſt quod caruca, &c.* A Soke or a Plough. In ancient time before the limitation of time of memory, a great part of the tenants which held of their Lords by Socage, ought to come with their Ploughs, every of the ſaid Tenants for certain daies in the year to plow and ſow the Demeſne of the Lord. And for that ſuch Works were done for the liuelihood and ſuſtenance of their Lord, they were quit againſt their Lord of all manner of ſeruices, &c. And becauſe that ſuch ſeruices were done with their Ploughs, this tenure was called Tenure in Socage. And afterward theſe ſeruices were changed into money by the conſent of the Tenants, and by the deſire of the Lords, *viz.* into an annual rent, &c. But yet the name of ſocage remaineth, and in diuers places the Tenants yet do ſuch ſeruices with their Ploughs to their Lord, ſo that all manner of Tenures which are not Tenures by Knights Service, are called Tenures in Socage.

Nomina ſi neſcis perit cognitio

nitio rerum. Et nomina ſi perdas certè diſtinctio rerum perditur. Therefore the names of things (as Littleton here teacheth) are for avoiding of confuſion diligently to be obſerved.

Section. 120.

¶ ITem ſi home tient ſa ſon Seignior per eſcuage certaine, ſ. ẽ tiel ſorme quant leſcuage curge, & eſt aſſeſſe per Parliament a greinder ſumme ou meinder ſumme, que le tenant paiera a ſon Seignior ſorſque demy marke pur eſcuage, & nient pluis ne meins, a quel graund ſumme, ou a quel petite ſumme q̃ leſcuage curge &c. tiel tenure eſt tenure en Socage, & nemy ſervice de chivalrie. Mes lou le ſumme que le tenant paiera pur leſcuage eſt non certain, ſ. lou il poit eſtre q̃ ſumme q̃ le tenant paiera pur leſcuage a ſon Seignior poit eſtre a un foits le greinder & a auter foits le meinder, ſolonque ceo que eſt aſſeſſe &c. dõques tiel tenure eſt tenure per ſervice de chivaler.

ALſo if a man holdeth of his Lord by eſcuage certaine s. in this manner, when the eſcuage runneth, and is aſſeſſed by Parliament to a greater or leſſer ſum, that the Tenant ſhall pay to his Lord but half a Mark for Eſcuage, and no more nor leſs, to how great a ſum, or to how little the eſcuage runneth, &c. Such tenure is tenure in Socage, and not Knights Service, but where the ſum which the tenant ſhall pay for Eſcuage is uncertain, s. where it may be that the ſum that the tenant ſhall pay for eſcuage to his Lord may be at one time more, and at another time leſs according as it is aſſeſſed, &c. ſuch tenure is tenure by Knights Service.

¶ *Escuage certein,* Is not in rei veritate ſervitium Scuti, which is to be done by the body of a man, but it is ſervitium Crumenæ, of money, which is to be drawn out of the purſe, and that is in effect a Tenure in Socage, wherein it is to be obſerved that the ſervice of payment of money is the more baſe, and leſs profitable for the commonwealth in this caſe, and herein ſomewhat hath been ſaid before in the chapter of Eſcuage, Sect. 98, 99. 15.E.2.tit. avowrie 218. 31.E.1.Aſſ.441. 26.Aſſ.66. 5.E.2.6.

If a man hold by Homage, Fealty and Eſcuage, s. by an halfe penny, when eſcuage runs at forty ſhillings, this is a tenure in ſocage, & no knights Service, for two cauſes.

First, It is Socage tenure, becauſe of the certainty, for to the tenure in Socage, certa ſervitia do ever belong, ſo as the Husbandman may the rather live in quiet. 5.E.4.128.Vid.Rot.Par. 4.E.3.nu.19.Clavering's caſe excellently reſolved in Parliament. Hill.3.E.2.coram Rege Rot.34.Agnes Frowicke caſe.

Secondly, Eſcuage is to be paid at every time when it is aſſeſſed, and here it is not to be paid, but when it amounteth to forty ſhillings.

Sect. 121.

¶ ITem ſi home tient ſa teñ pur paier certaine rent a ſon ſeignior pur Caſtle-garde, tiel tenure eſt tenure ẽ ſocage:

ALſo if a man holdeth his land to pay a certaine rent to his Lord for Caſtle-guard, this tenure is tenure in Socage, but

¶ HEreto the difference ſtandeth thus. If a rent be paid for Caſtle-garde, it is cleare a ſocage tenure, as it is a-gainſt Vide ſect. 88, 89.

Vide lib. 4. fol. 88. in Lutterels case. 19. R. 2. gard. 195. 26. Ass. 66. F. N. B. 83. 256. Lib. 6. fol. 20. Gregories case.

ed in Lutterels case according to Littletons opinion, but if a sum in gross, or other thing be voluntarily paid or given by the Tenant,

Mes lou ꝛ tenant doit ꝓ luy m, ou ꝓ un auter faire Castle-garde, tiel tenure est tenure per service de chivaler.

where the tenant ought by himself or by another to do Castle-gard, such tenure is tenure by Knights Service.

and voluntarily received by the Lord in lieu of Castle-gard, yet the tenure by Knights service remaineth. Vide Sect. 88, 89.

Sect. 122.

IT is called Rent service, because it is accompanied with some corporal service, as Fealty at the least, in respect whereof the Lord may distraine for it of common right. See more of this matter in the Chapter of Rents.

ITem en touts cases lou ꝛ tenant tient del Seignior a paier a luy ascun certeine rent, cel rent est appelle rent service.

ALso in all cases, where the tenant holdeth of his Lord to pay unto him any certaine rent, this rent is called Rent Service.

Sect. 123.

EN *tiels tenures* ē *Socage*. If a man be seised of a Rent charge, Rent seck, common of pasture, & such like Inheritances, which do not lie in tenure, & dyeth his heire within age of 14. yeares. In this case, the heire may chuse his Gardein, but if he be of such tender years as he can make no choice then (if the father hath made no disposition of the custody of the Child) it were most fit, that the next of kin to whom the inheritance cannot descend should have the custody of him. And whosoever taketh the rent, &c. ꝑ heire shall charge him in an account. But if he hold any Land in Socage, In that Case the

Vide le statute de 4. & 5. Ph. & Marie. cap. 8.

ITem en tiels tenures en socage sir ꝛ ad issue & devie, son issue esteā deins lage d 14. ās donques ꝛ ꝓchein amy del heire a q̄ lheritage ne poit discēdr aver̄ la gard d la terr & del heir iesq̄ al age del heir de 14. ans, & tiel Gardein est appelle gardein en socage Car si la terre descēdist al heire de ꝓ le pier, donques la mere, ou auter ꝓcheine coseñ de ꝓ le mere avera la garde. Et si le terre discendist ad heir de part la mere, donques le pier ou le ꝓchein amy de part del pier avera le garde de tiels terrs ou tenemēts. Et quant lheire vient al age de 14, ans compleat, il poit enter & oustre le Gardein en Socage, &

ALso in such tenures in Socage if the Tenant have issue & die, his issue being within the age of 14. years, then the next friend of that heir to whom the inheritāce cannot descend shal have the Wardship of the land and of the Heir untill the age of 14. years, and such Gardeine is called Gardeine in Socage. For if the land discend to the heir of the part of the father, then the mother, or other next Cousin of the part of the mother, shall have the wardship. And if land discēd to the heir of the part of the mother, then the father or next friend of the part of the father shall have the wardship of such lands or Tenements.

occupier la terre luy meſm til voit. Et tiel Gardeine en ſocage ne prendra aſcuns iſſues ou profits de teir terres ou tenements a ſon uſe demeſne, mes tantſolement al uſe & profit del heire, & del ceo il rendra accompt al heire quant pleaſt al heire apres ceo que lheire accomplish lage de xiiii. ans. Mes tiel Gardein ſur ſon accompt avera allowance de touts ſes reaſonable coſts et expences en touts choſes, &c. Et ſi tiel gardein maria lheire deins xiiii. ans, il accomptera al heire, ou a ſes executors de value del mariage, coment que il ne prift riens pur le value del mariage, pur ceo que il ſerra tenu ſa folly demeſne, que il luy voiloit marier ſans prender la value del mariage, ſinon que il luy maria a tiel mariage que eſt tant en value come le mariage del heire, &c.

And when the heir cometh to the age of 14. years compleat he may enter and ouſt the Gardian in ſocage, & occupy the land himſelf if he will. And ſuch gardian in ſocage ſhal not take any iſſues or profits of ſuch lands or tenemẽts to his own uſe, but only to the uſe and profit of the heir, and of this he ſhal render an account to the heir when it pleaſeth the heir after he accompliſheth the age of 14. years. But ſuch gardian upon his account ſhal have allowance of all his reaſonable coſts and expences in all things, &c. And if ſuch gardian marry the heir within age of 14. years he ſhall account to the heir or his executors of the value of the mariage, although that he took nothing for the value of the mariage, for it ſhall be accounted his own folly, that he would marry him without taking the value of the mariage, unles that he marrieth him to ſuch a marriage that is as much worth in value as the mariage of the heir.

Gardian in ſocage ſhall take into his cuſtody, as well the rent charges, &c. as the land holden in ſocage, becauſe he hath the cuſtody of the heir.

¶ *Si le tenant ad iſſue & devie.* The ſame Law it is if the tenant hath no iſſue; but a brother or coſin within age of 14. years at the time of his death.

(a) Alſo this doth extend as well to iſſue female as to iſſue male. (a) 10.R.2.Account,130.

¶ *Deins lage de 14. ans.* Of this ſufficient hath been ſpoken in the next preceding chapter.

¶ *Donques le procheine Amy del heire a que le enheritance ne poit diſcender.* The next friend of the heir, &c. Here Amy or friend is taken for the next of blood, ſo the effect of it is, that the next of his blood to whom the inheritance cannot deſcend, whereby affinity without blood is excluded. Glanvil.lib.7.cap.11. Britton.162. Fleta lib.1.cap.9. Stat.de Hibernia, tit. Partition.

¶ *Le prochein.* The next.

(b) If there be three brethren, and the youngeſt hoſdeth land in ſocage, and hath iſſue & dyeth his iſſue within age of 14. years both the Uncles are in equall degree, and yet the eldeſt ſhall be Gardian, becauſe in equall degree the Law preferreth him. (c) And yet if lands holden in ſocage be given to a man and to the heirs of his body, and he dyeth his heir within age, the next coſin of the part of the father albeit he be worthier ſhall not be preferred before the next coſin of the part of the mother, but ſuch of them as firſt ſeaſeth the heire ſhall have his cuſtody: But if lands be given in Frankmariage, and the Donees have iſſue and dye their iſſue within age of 14. years, the next of kin of the part of the mother, ſhall have the cuſtody of the body, and not the next of kin of the part of the father albeit he firſt ſeaſed it, becauſe the mother was the cauſe of the gift. If a man be ſeiſed of lands holden in Socage of the part of his Father, and of other lands holden in ſocage of the part of his mother, and dyeth, his iſſue being within the age of 14. years. In this caſe ſuch of the next of kin of either (b) Vid.30.Aſſ.45. (c) Pl.com. Carrels caſe. 47.H.3.Gard.146.

either live as ſtill happeth the body of the heir ſhall have him, but the next of blood of the part of the father ſhall enter into the lands of the part of the mother, and the next of kin of the part of the mother, ſhall enter into the lands of the part of the father.

(d) F.N.B. 139.b. Regiſt.
(e) 7.E.3.46.
16.E.3.ac.52.
21.E.3.8.31.E.3. Enfant 9.
17.E.2. Account 121.
26.E.3.63. 10.H.6.14.
F.N.B. 118.
(f) Bract.li.2.fo.88.
(h) Flet.li.1.ca.10.

(b) If A. be Gardian in Socage, of the body and lands of B. within the age of fourteen years, A. ſhall be Gardian in Socage per cauſe de Gard. But an Infant within age, that (c) is not in the cuſtody of another, cannot be Gardian in Socage, becauſe no writ of account lyeth againſt an Infant. And herewith agreeth Bract. (f) and yieldeth this reaſon, Alium regere non poteſt, qui ſeipſum regere non novit. And Fleta ſaith (h) That minor minorem cuſtodire non debet, alios enim præſumitur male regere qui ſeipſum regere neſcit. And by like reaſon an Idiot, a man non compos mentis, a Lunatick, a man cæcus & mutus, or ſurdus & mutus, or a Leper removed by a writ de Leproſo amovendo, cannot be Gardian in Socage, but in the caſe of Gard per cauſe de Gard, there lyeth an Action of Account againſt A. in the caſe aboveſaid.

(i) Lib. Rub. cap. 70.
(k) Glanv. l. 7. ca. 11.
(l) Pl. Com. Carrels caſe.

¶ *A que le heritage ne poet deſcender.* (i) Nullus hæredipetæ ſuo propinquo vel extraneo periculoſa ſane cuſtodia committatur. Note (k) this word (Poet) may or can. (l) And therefore this doth not onely exclude an immediate diſcent, but all poſſibility of diſcent. As if a man hath iſſue two ſons by ſeveral Venters, and having lands holden in Socage of the nature of Burgh English, dyeth, the yonger brother within age of fourteen years, (m) the elder brother of the half blood ſhall not have the cuſtody of the Land, becauſe by poſſibility the elder may inherit the land, for if the youngeſt dye without iſſue, and the land diſcend to an Uncle, the elder brother of the half blood may be heir unto him: and herewith do agree our ancient Authors: (n) Hæres ſokmanni ſub cuſtodia capitalium Dominorum non erit, ſed ſub cuſtodia conſanguineorum ſuorum propinquorum, hoc eſt, eorum qui conjuncti ſunt jure ſanguinis, & non jure ſucceſſionis, ex parte quorum non deſcendit hæreditas, & regulariter verum eſt, quod nunquam remanebit aliquis in cuſtodia alicujus, de quo haberi poſſit ſuſpitio, quod velit jus clamare in ipſa hæreditate, & unde ſi plures ſint filiæ & hæredes & tenere debeant in Socagio, nulla debet eſſe in cuſtodia alterius. (o) And this is contrary to the Civil Law; for, Leges Civiles impuberum tutelas proximis de eorum ſanguine committunt, ſive agnati fuerint, ſive cognati, unicuique, videlicet, ſecundum gradum & ordinem qui in hæreditate pupilli ſucceſſurus eſt. But this the Law of England ſaith, Eſt quaſi agnum lupo committere ad devorandum.

(m) Lit. li. 1. fol. 2, 3.

(n) Bract. li. 2. fol. 87.
Brit. f. 163. b. Fle. l. 1. c. 10.
28.E.1. Stat. 1. Forteſc. c. 40.

(o) Forteſc. ub. ſupr. Statut. de Homagio capiendo, temps E. 1.

¶ *Donques le mere.* Note, albeit Land cannot diſcend to the mother from her ſonne, (as hath been ſaid) becauſe inheritance cannot aſcend, yet here it appeareth by Littleton, That ſhe is next of blood, for that none (as hath been ſaid) can be Gardian in Socage, but the next of blood, and the like is to be ſaid of the Father, as hereafter next appeareth.

¶ *Donques le Pier.* By this it appeareth, That the Father in caſe of a tenure in Socage ſhall be Gardian in Socage, and ſhall not have the cuſtody of his eldeſt ſonne, in reſpect of his paternal natural cuſtody, (as he ſhall have in caſe of a tenure by Knights ſervice, as before appeareth) but as Gardian in ſocage: and the reaſon of the diverſity is, for that in the caſe of a tenure in ſocage, the Father muſt by Law be accountable to the Sonne both for the marriage, and alſo for the profits of his Lands, which he ſhould not be if he had the cuſtody of his eldeſt ſonne in this caſe as his father, in reſpect of nature, and the act of Law never doth any man wrong.

But no Lord or other perſon in reſpect of any tenure by Knights ſervice or otherwiſe ſhall have the cuſtody of any child that is heir apparant to his father, but the Father only during his life, as hath been ſaid before.

It is to be obſerved, that in the Laws of England, there are three manner of Gardianſhips, viz. by the Common law, by ſtatute law, and by cuſtome. By the common law there are four manner of Gardians, viz. Gardian in chivalry (whom Littleton hath deſcribed before Section 103. &c.) Gardian by nature, as the Father of the eldeſt ſon, of whom Littleton hath ſpoken Section 123. Gardian in ſocage treated of by Littleton in this Section, and Gardian per cauſe de nurture, all conſequent in (a) our books. By ſtatute, viz. the ſtatute in 4. & 5. Phil. & Mariæ, of women children, and that is in two manners, either of the father or mother without aſſignation, or of any other to whom the father ſhall appoint the cuſtody, either by his laſt will, or by any Act in his life time, whereof you ſhall read at large (b) in Ratcliffes caſe in my Reports.

(a) 8.E.3.43.8.E.4.5.

(b) Lib. 3. fol. 57. Ratcliffes caſe.

(c) Laſtly, by cuſtome, as of Orphans by the cuſtome of the city of London, and of other cities and boroughes.

(c) 32. E.2. gard. 31.
8.R.2. gard. 166.

¶ *Tant ſolement al uſe & profit del heir.* And therefore Gardian in ſocage ſhall not forfeit his intereſt by outlawrie or attainder of felony or Treaſon becauſe he hath nothing to his own uſe, but to the uſe of the heir.

His

Although the mother be Gardian in ſocage, and taketh husband, and dyeth, the husband ſhall not have this cuſtody by ſurvivor, becauſe the wife had it en auter droit, in the right of the heir. Pl.Com.

A Gardian in ſocage ſhall not (d) preſent to a benefice in the right of the heir becauſe he cannot be accomptable therefore, for that he can make no benefit thereof, for the law doth abhor ſimony or any corrupt contract for benefices, and therefore in that caſe the heir ſhall preſent himſelf, and Britton ſpeaking of theſe Gardians, ſaid well, Les queux gardeins ſont pluis ſerjants que gardeins, (that is) which Gardians are rather ſervants then Gardians. (d) 8.E.2.præſentment 10.7.E.3.39.27.E.3.89. 29.E.3.5.F.N.B.33. 31.E.3.Eſtoppel,340. Britton 163.164. Fleta lib.1.cap.10.

¶ *Il rendra account, &c. apres que lheire ad accompliſhe lage de* 14. *ans.* This point hath been much controverted in our books, and the cauſes of the doubts have been, firſt upon the words of the ſtatute of (e) Merlebridge, cap. 17. 2 Upon the original writ of Account againſt the Gardian in ſocage. The words of the ſtatute be Cum ad legitimam ætatem pervenerit ſibi reſpondeat, &c. and legitima ætas, (f) lawful age, is xxi. years. Alſo the writ of Accompt reciteth the ſaid ſtatute, Quare cum de communi conſilio regni noſtri proviſum ſit quod cuſtodes terrarum, & tenementorum quæ tenentur in Socagio hæredib us terrarum & tenementorum illorum cum ad plenam ætatem pervenerint reddant rationabilem compotum, (g) Wherupon it is gathered that no action of account did lie againſt the Gardian in ſocage at the common law, until the heir be of his lawful age of 21. years. But as to the firſt (legitima ætas) as the ſtatute (h) ſpeaketh, or plena ætas (as the writ doth render it) are to be underſtood ſecundum ſubjectam materiam, that is of the heir of ſocage land, whoſe lawful and full age, as to the cuſtody or Gardianſhip is 14. And as to the recital of the ſtatute, (i) it is evident that an Action of Account did lie againſt Gardian in ſocage at the common law. And that the ſtatute was made in affirmance or Declaration of the common law, for the ſtatute ſpeaketh only De cuſtodia parentum, that is of a Gardian in right, but yet an Action of Account lieth againſt him that occupieth the land as Gardian, albeit he be not of the blood (as hereafter ſhall be ſaid.) And upon conſideration had of the ſaid ſtatute and of all the books, it was adiudged in the court of common Pleas, Paſch. 16. Eliz. Rot. 436. according to the opinion of Littleton, that the heir after the age of 14. years ſhall have an Action of Account againſt the Gardian in ſocage, when he will at his pleaſure, and ſo is an ancient queſtion well reſolved. (e) It is called the ſtatute of Merlebridge, becauſe the Parliament in 52.H.3. was holden there (f) 16.E.3.waſt.100. 18.E.3.55.77. 29.E.3.5. Vide 32.E.3.Gard.31. F.N.B.118. 6.E.3.38. (g) 16.E.2.Account 120. 17.E.2.ibid 121. (h) 2.E.2.Account. 14.E.3.ibid. 3.Mar.137. Keylwey 131. (i) 18.E.2.Avowry 210. Paſch.16.Eliz.Rot.436. incommuni banco.

Britton was of opinion that the ſtatute of Merlebridge which gave the Capias in Account, extended to Gardian in ſocage, for he wrote before the ſtatute of W.2.c.11. But later books have over-ruled this point, that no Capias lieth againſt Gardian in ſocage, for the ſtatute extendeth to bailifes only; Neither doth the ſtatute of W. 2. extend to Gardian in ſocage, for that ſpeaketh only De ſervientibus, balivis, camerariis, & receptoribus. Mirror ca.2.Sect.17. Britton fol 163.b. Fleta lib.2 cap.64. 18.E.2.Avowry 220. 17.E.3.59.Merlbr.ca.23. W.2.ca.11.

¶ *Mes tiel gardein ſur ſon account avera allowance de touts ſes reaſonable coſts & expences en touts choſes.* And this is due to all Accountants by the common law, and ſo it is declared by the ſaid ſtatute of Merlebridge, Sa vis ipſis cuſtodibus rationabilibus miſis ſuis. The ſtatute of Merlbr. intended by Littl. is cap.17.

¶ *Allowance.* What other allowances ſhall the Gardian have? If the Gardian receive the Rents and Profits of the lands, and be robbed of the ſame, whether ſhall he be diſcharged therof upon his Account? and it ſeemeth, that if he be robbed without his default or negligence he ſhall be diſcharged thereof. As if a bailiff of a Mannor or a Receiver, or a Factor of a Merchant or the like Accountant be robbed, he ſhall be diſcharged thereof upon his Account, and ſeeing the Gardian ſhall be charged as bailiff after the heirs age of 14. and be diſcharged upon his account, if he be robbed, Pari ratione, if he be robbed before the age of 14. But otherwiſe it is of a Charter, for he hath his heir, and thereby implicitely undertaketh the ſafe delivery of the Goods delivered to him, and therefore he ſhall anſwer the value of them if he be robbed of them. Note the diverſity, and ſo it was reſolved *in the Kings bench. 41.E.3.3.22.Aſſ.41. 22.E.3.Account 111. 29.Aſſ.28.3.H.7.4.b. 6.H.7.12. 10.H.7.25. 10.H.6.21.2.E.4.15. Doct.& Stud.c.38.fo. 130. *Hill.38.Eliz.inter Woodliefe & Curtiss.

So it is if Goods be delivered to a man to be ſafely kept, and after thoſe Goods are ſtollen from him, this ſhall not excuſe him, becauſe by the acceptance he undertook to keep them ſafely, and therefore he muſt keep them at his peril.

So it is if Goods be delivered to one to be kept, for, to be kept, and to be ſafely kept, is all one in law: But if the Goods be delivered to him to be kept, as he would keep his own, there if they be ſtollen from him without his default or negligence, he ſhall be diſcharged. So if Goods be delivered to one as a gage or pledge, and they be ſtollen, he ſhall be diſcharged, becauſe he hath a property in them, and therefore he ought to keep them no otherwiſe then his own; but if he that gaged them, tendred the money before the ſtealing, and the other refuſed to deliver them, then for the default in him he ſhall be charged. 29.Aſſ.p.28.

If A. leave a cheſt locked with B. to be kept, and taketh away the Key with him, and acquaintech 8.E.2.tit.Detinue 59.

quainteth not B. what is in the cheſt, and the cheſt together with the goods of B. are ſtolen away, B. not ſhall be charged therewith, becauſe A. did not truſt B. with them as this caſe is. And that which hath been ſaid before of ſtealing, is to be underſtood alſo of other like accidents, as ſhipwack by ſea, fire by lightning, and other like inevitable accidents. And all theſe caſes were reſolved, and adjudged in the Kings bench. * And by theſe diverſities are all the books concerning this point reconciled.

* Paſch.43. Eliz. inter Southcote & Bennet in detinue.

Note, Reader it is neceſſary for any that receiveth goods to be kept, to receive them in this ſpecial manner, viz. to be kept as his own, or to keep them at the peril of the owner. But now is Littleton to be further heard.

¶ *Et ſi tiel gardein maria le heire deins 14. ans, &c.* For if he marry the heir after 14. he is out of his cuſtody, and no account ſhall be made therefore.

¶ *Il accountera a luy.* He ſhall account for the mariage of the heir, viz. for ſo much as any man bona fide had offered for the mariage, or would give in mariage unto him.

¶ *Ou a ſes Executors.* Note that an infant of the age of 14. may make his Will (as ſome hereupon have collected) but the meaning of Littleton is, that if after his marriage he accompliſh his age of 18. years at what time he may make his Teſtament, and conſtitute executors to his goods and chattells, and the words are ſo to be underſtood, as may ſtand with Law and reaſon. Note, Executors could not have an Action of Account at the Common Law, in reſpect of the privity of the account, but the ſtatute of W. 2. cap. 23. hath given the action of account to executors, the ſtatute of 25. E. 3. c. 5. to Executors of Executors, and the ſtatute of 31. E. 3. c. 11. to Adminiſtrators.

7. E. 3. 62.
19. E. 2. account 56.
38. E. 2. 7.
31. E. 3. tit. Account 57.

¶ *Que il voile luy marier ſans prender le value.* So as the Gardian ſhall not account onely for that which he ſhall receive in this caſe, but for that alſo which he might receive.

3. E. 3. 10.
46. E. 3. Account 40.
2. R. 2. Ibid. 45.
6. R. 2. Account 47.

¶ *Si non que il luy marier a tiel mariage que eſt tant en value, &c.* This needeth no explanation.

If the heir in Socage be ravished out of the cuſtody of the Gardian, and the ravisher marieth the heir, the Gardian ſhall have a writ of ravishment of ward, and recover the value of the mariage, and ſhall account to the heir for the ſame.

Hill. 3. E. 2. Coram Rege, Rot. 24. Agnes Frowicks caſe. F. N. B. 139. I. & 140. 26. E. 3. 65. 1 E. 3. 19. 20.

And the Gardian in Socage is bounden by Law, that the heir be well brought up, and that his evidences be ſafely kept.

The Grandmother of the ſon and heir of John Bernevil who held the Manor of Totington in the County of Midd. in ſocage, recovered the heir in a Ravishment of ward againſt Simon Chevin which had married the ſtepmother of the heir, and by the rule of the Court the plaintif Pro nutritura hæredis, & pro cuſtodia evidentiarum, invenit plegios.

Trin. 1. H. 5. Coram Rege Rot. 1. Midd.

Sect. 124.

¶ *ET ſi aſcun auter home que neſt pas procheine amy, &c.* If a ſtranger entreth into the lands of the Infant within age of 14. and taketh the profits of the ſame, the infant may charge him as Gardian in ſocage. And this doth well agree with the writ of account againſt a Gardian in ſocage, for the words be, Idem B. præfato A. rationabilem compotum ſuum de exitibus

19. E. 2. Avowry, 221.
39. E. 3. 16.
41. E. 3. Account 35.
49. E. 3. 10. 18. E. 3. 77.
28. Aſſ. p. 11. Pl. Com. 542
6. E. 3. 38. F. N. B. 118.

¶ ET ſi aſcun auter home q̄ neſt prochein amy, occupie les terres ou tenements del heire come gardeine en ſocage, il ſerra compell̄ de render accompt all heire, auxi bien ſi cō il fuiſſoit prochein amy: car il neſt pas plee pur luy en briefe Daccompt adire, que il neſt procheine amie, &c. mes il reſpondra q̄ quel

AND if any other man, who is not the next friend, occupies the Lands or Tenements of the heire as Gardian in Socage, he ſhall be compelled to yield an account to the heir as well as if he had been next friend, for it is no plea for him in the Writ of Account to ſay that he is not the next friend, &c. but he ſhall anſwer

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il ad occupie les terres ou tenements gardeine en ſocage ou nemy. Sed Quære, ſi apres ceo que le heire ad accompliſh lage de 14. ans, & Gardeine en ſocage continualment occupia la terre tanque lheire veint a plein age ſ 21. ans, ſi le heire a ſon plein age avera action Daccompt envers le gardeine de temps que il occupia apres les dits 14. ans, come envers Gardeine en Socage, ou envers luy come ſon baylife.

whether he hath occupied the lands or tenements as Gardian in Socage or no. But *quære*, if after the heir hath accompliſhed the age of 14. years, and the Gardian in Socage, continually occupieth the land untill the heire comes to full age. ſ. of 21. years, if the heire at his full age ſhall have an action of Account againſt the gardian, from the time that he occupied after the ſaid 14. years, as gardian in ſocage, or againſt him as his Bailiffe.

provenientibus de terris & tenementis ſuis in N. quæ tenentur in ſocagio & quorum cuſtodiam idem B. habuit dum præd. A infra ætatem fuit ut dicitur. And true it is that in judgment of law he had the cuſtody of the lands: and he is called Tutor alienus, and the right Gardian in Socage tutor Proprius, and it is no præ for him to deny that he is procheine amy, but he muſt anſwer to the taking of the profits as Littleton here ſaith.

13.E.3. Account.77. 22.E.3.11. 41.E.3.Account.35. 10.H.7 7.4.H.7.6.b. 7.H.7.9.a.

¶ *Sed quære*, &c. This Quære came not out of Littletons quiver, for it

6.E.3.38. 32.E.2.Account 60. 7.E 4.F.N.B.118.

is evident that after the age of 14. years he ſhall be charged as Bailiff at any time when the heir will, either before his age of 21. years or after.

Sect. 125.

¶ Item ſi gardeine en chivalry face les executors & deby, le heire eſteant deins age, &c. les executors averont le garde durant le nonage, &c. Mes ſi Gardein en Socage face les executors, & deby, le heire eſteant deins lage ſ 14. ans, les executors naveront pas le garde, mes un auter procheine amy, a que le heritage ne poyt my diſcend, avera la garde, &c. Et la cauſe de diverſity eſt, p ceo que Gardeine en

ALſo if Gardian in Chivalrie makes his executors and die, the heir being within age, &c. the Executours ſhall have the Wardſhip during the nonage, &c. but if the Gardian in Socage make his Executours and die, the heir being within the age of 14. years, his Executors ſhall not have the wardſhip, but another the next friend, to whom the Inheritance cannot deſcend, ſhall have the Wardſhip, &c. And the reaſon of this diverſitie is be-

¶ *A Son propre uſe.* A Tenant holdeth land of a biſhop by Knights ſervice, which ſeigniory the biſhop hath in the right of his biſhoprick, the Tenant dieth his heir within age, the biſhop either before or after ſeiſure dyeth, neither the king nor the ſucceſſor of the biſhop ſhall have the wardſhip, but his Executors. For albeit the biſhop hath the ſignorie in auter droit, yet the wardſhip being but a chattel he hath in his own right, and a chattell cannot go in the ſucceſſion of a ſole Corporation, unleſs it be in the caſe of the King.

7.R.2.bre.6.1. 40.E.2.14.2.H.4.19. 10. Eliz. Dier.277.

7.H.4.41.44. E.3.42.

And yet if a biſhop have an Advowſon, and the Church become void, and the biſhop die, neither the ſucceſſor nor the executors ſhall preſent, but the king, becauſe it is but a Choſe in action. And ſo it is in caſe where the king hath wardſhip, but that

21.E.3.26.44.E.3. F.N.B.33. See more of this in the chapter of Warranty. Sect.740.

that is a prerogative that belongeth to the king to provide for the Church being void, for where the tenure by Knights ſervice is of a common perſon, the Executors of the tenant ſhall preſent where the avoidance fell in the life of the Tenant.

31.E.3 account.57.
19.E.3.ibid.156.
48.E.3.2.
8.H.4.13.F.N.B.117.
19.H.6.5. 41.E.4.25.
43.E.3.21. Lib.11.fo 89.

¶ *Le heire eſt ſauns remedie, &c.* For albeit in an action of account againſt a Gardian in ſocage, &c. the Defendant cannot wage his Law, yet in reſpect of the privity of the matters of account, and the diſcharge reſting in the knowledge of the parties thereunto, an action of account neither lyeth againſt the executors of the accountant, nor at the common law for the Executors of him to whom the account is to be made as is aforeſaid, but that is holpen by ſtatute, (*) It hath been attempted in Parliament to give an action of account againſt the Executors of a Gardian in ſocage, but nought could be effected.

chivalrie ad le garde a ſon proper uſe, & Gardein en Socage nad le garde a ſon uſe, mes al uſe del heire. Et en cas lou le Gardein en Socage deby devant aſcun accompt fait per luy al heire, de ceo le heire eſt ſans remedie, pur ceo que nul briefe daccompt giſt envers les Executors ſi non pur le Roy ſolement.

cauſe the Gardian in Chivalrie hath the wardſhip to his own uſe, and the gardian in Socage hath not the wardſhip to his own uſe, but to the uſe of the heire. And in this caſe where the Gardian in ſocage dyeth before any account made by him to the heire, of this the heire is without remedy, for that no writ of accoũt lieth againſt the Executors, but for the King only.

* Rot.parl.50.E.3.nu. 123.

(a) Pl.Com.321. Keyleway 131. Lib. 11. fol. 89.

¶ *Si non pur le roy ſolement.* (a) The reaſon of this is, becauſe the Kings Treaſure is the ſinewes of warre, and the honour and ſafety of the King in time of peace, firmamentum belli, & ornamentum pacis, and therefore the death of the party ſhall not bar the King of his treaſure due unto him upon the account, becauſe it is intended that the King was buſied about the publick for the good of the common-wealth, and had not leiſure to call his accountant to make his account, & nullum tempus occurrit Regi. Littleton ſpeaketh of the Kings Prerogative but twice in all his books viz. here, and Sect. 178. and in both places, as a part of the laws of England. Prærogativa (b) derived of præ. i. ante, and rogare, that is, to aſk or demand before-hand, whereof cometh prærogativa, and is denominated of the moſt excellent part, becauſe though an Act hath paſſed both the houſes of the Lords and Commons in Parliament, yet before it be a law, the Royal aſſent muſt be asked or demanded and obtained, and this is the proper ſenſe of the word. But regis (*) it extends to all Powers, Preheminences, and Privileges, which the law giveth to the crown, whereof Littleton here ſpeaketh of one. Bracton lib. 1. in one place calleth it libertatem in another Privilegium Regis. (c) Britton (d) (following W. 1.) Droit le Roy. (e) Regiſtr. jus Regium, and jus Regium Coronæ, &c.

Vid.Sect.178.
Stanf. prær.32.
(b) Forteſcue.fol.45.
Rot.Parl. 1.H.4.nu.188.
Pl.Com.236.
Stanf. pl. cor. 161.b.
Stanf.prær.1.2.b.& 10.b.
(*) Stanf.prær.5.10.

(c) Weſt.1.cap.50.
(d) Britton.fol.27.
(e) Regiſt.fol.61.&c.

Sect. 126.

42.E.3.barre 294.
9. E.4.36.
Bract.lib.2.fol.35.
Glanvil.lib.9.cap.4.

¶ *Certeine rent.* A Tenant holdeth of his Lord certain lands in Socage to pay yearly a paire of gilt ſpurs or five ſhillings in money at the feaſt of Eaſter. In this caſe the rent is uncertaine, and the tenant may pay which of them he will at the ſaid feaſt, and likewiſe the tenant may pay which of them he will for relief, but if he pay it not when he ought, then may the

¶ Item le ſeignior de que la terre eſt tenus en Socage apres le mort ſon tenant, avera reliefe en tiel forme. Si le tenant tient per fealtie & certain rent, a paier annualment, &c. ſi les termes de paiment

Alſo the Lord of whom the Land is holden in Socage, after the deceaſe of his Tenant ſhall have relief in this manner; If the Tenant holdeth by fealty, and certain Rent to pay yearly, &c. if the tearmes of ſont

ſont a payer per deux termes del an, ou per quater termes ſi an, le Seignior avera del heire ſon tenant tant come le rent amount que il paya p an. Sicome le tenant tient de ſon ſeignior per fealtie & x. ſ. de rent, payable a certaine termes del an, donques lheire paie al Seignior x. ſ. pur relieſe, ouſter les x. ſ. que il paiera pur le rent.

paiment be to pay at two terms of the year, or at 4. terms in the year, the Lord ſhall have of the heir his Tenant, as much as the Rent amounts unto which he payeth yearly: as if the Tenant holds of his Lord by fealty, & ten ſhillings Rent payable at certain terms of the year, then the heir ſhall pay to the Lord ten ſhillings for relief, beſide the ten ſhillings which he paieth for the Rent.

Lord diſtrain for which of them he will. But if the tenure be to attend on his Lord at the Feaſt of Chriſtmaſs, or to pay ten ſhillings, there the relief muſt be ten ſhillings, becauſe the other cannot be doubled, & ſic de ſimilibus.

¶ *A paier annuelment.* If the tenant holdeth of his Lord by fealty, and to pay every two or three years ten ſhillings, albeit this be no annual Rent, yet ſhall he pay ten ſhillings for relief, & ſic de ſimilibus.

But it is to be noted, that beſide relief whereof Littleton here ſpeaketh, there belongeth to a tenure in ſocage of common right, aid, for the making of his eldeſt ſon a Knight at the age of fifteen years, and to marry his daughter at the age of 7. years.

Vid. Sect. 103. F.N.B. 82. Weſt. I. cap. 35. 25. E. 3. ſtat. 5. cap. 11.

En meſme le manner eſt, ſi home ſoit ſeiſie de certeine terre que eſt tenus en Socage, & fait feoffement en fee a ſon uſe & mourſt ſeiſie del uſe (ſon heire del age de 14. ans, ou pluis) & nul volunt per luy declare, le Seignior avera relieſe del heire, ſicome avant eſt dit. Et ceſt per le ſtatute de An. 19. Hen. 7. cap. 15.

In the ſame manner it is, if a man be ſeiſed of certain land wch is holden in ſocage, & maketh a feoffement in fee to his own uſe, & dieth ſeiſed of the uſe (his heir of the age of 14. years or more) and no will by him declared, the Lord ſhall have relief of the heir as afore is ſaid. And this by the ſtatute of 19. H. 7. cap. 15.

This is an addition to Littleton, wherefore I omit it the rather for that the ſtatute of 19. H. 7. is for the cauſe abovementioned become of none effect.

Sect. 127.

¶ ET en tiel cas ayres la mort le Tenant, tiel relieſe eſt due al Seignior maintenaut, de quel age que le heire ſoit, pur ceo que tiel Seignior ne poit aver le garde de corps ne de terre

AND in this Caſe, after the death of the tenant, ſuch relief is due to the lord preſently, of what age ſoever the heir be, becauſe ſuch Lord cannot have the wardſhip of the body, nor of the land of the heir.

¶ *Maintenant*, as Littleton ſaith, he ought not to attend the payment of his relief according to the days of paiment of his Rent, but he ought to have his relief preſently, and for the ſame he may incontinently diſtrain after the death of the Tenant.

And therefore in the caſe aforeſaid, where the Tenant holdeth by the Rent of five ſhillings, or a pair of gilt Spurrs,

16. H. 7. 4. 18. E. 3. 26. p. 18. Bracton lib. 2. fol 85. dabit hæres una vice redditum ſuum unius anni duplicatum. Britton. fol. 178. acc. Fleta lib. 1. cap. 8.

Spurres, if the heir be not presently (that is, as presently and as conveniently as he may, all due circumstances considered) after the death of his Ancestor ready upon the land to pay relief, the Lord may distrain for which of them he will, and if the tenant tendred either of them according to the Law, and none for the Lord was ready there to receive it, yet the Lord may distrain for that which was tendred at his pleasure.

le heire. Et le Seignior en tiel case ne doit attendre a le payment de son reliefe, solonques les termes & jours de payment de rent, mes il doit aver son relief maintenant, & pur ceo il poit incontinēt distraine apres le mort son tenant, pur relief.

And the Lord in such case ought not to attend for the payment of his relief, according to the terms and daies of payment of the rent, but he is to have his relief presently, and therefore he may forthwith distrein after the death of his Tenant for relief.

¶ *De quel age que le heire soit.* And yet it appeareth in our books that in this case, the King in case of a tenure in socage in chief, shall not have primer seisin unles the heir be of the age of 14. years at the death of his Ancestor, for if he be under that age, he is in the gard and custody of his prochein amy.

45.E.3.19.35.H.6.52. 20.Eliz.Dier 361. Stanf.prær.13.b. F.N.B.256.259.

But otherwise it is in case of a common person, as here it appeareth. And where, in some impressions these words be added (sillint que il passa lage de 14. ans) those words so added are against the law, and no part of Littletons work.

Sect. 128.

¶ *Un lib. de pepper ou cumyn* Here it is to be observed that the Lord may reserve Pepper or any other things that be exotica, forrein, of the growth of outlandish Countries, or beyond sea, as well as of the growth of England, whereby Navigation (the life of every Iland) is imployed. And where Littleton here putteth his case in the disjunctive if the Tenant doth hold by fealty and one pound of Pepper or a pound of Cummin, he shall pay for relief a pound of Pepper, or a pound of cummin over and besides the rent. But if the tenant holdeth of his lord by doing of certain work daies in harvest, or to attend at Christmas, or such like, he shall not double the same, for of Corporal service or labour or work of the tenant, no relefe is due, but where the tenant holdeth by such yearly rents or profits, which may be paid or delivered, whereof Littleton hath put his examples, and by them is manifestly proved that corporal service, work, or labour shall not be doubled in this Case.

¶ En Mesme le Maner est lou le tenant tient de son Seignior per fealtie, & un li. de Peper, ou Cummin, & le tenant morust, le seignior avera pur relief un lib. de Cummin, ou un lib. de Peper, ouster le common rent. En Mesme le maner est lou tenant tient a payer per un certaine number de Capons, ou de gallines, ou un paire de gaunts, ou certaine bushels de frument, & hūmodi.

In the same manner it it, where the Tenant holdeth of his Lord by fealty, and a pound of Pepper or Gummin, and the Tenant dyeth, the Lord shall have for relief a pound of Cummin, or a pound of Pepper besides the cōmon rent. In the same manner it is where the Tenant holdeth to pay yearly a number of Capons or Hens, or a pair of Gloves, or certain bushels of Corn, or such like.

¶ *Ou certaine bushels de frument.* Here it appeareth that the relief of bushels of corn is to be paid presently though the tenant die in Winter before corn be ripe.

Mon

Note, here are examples put of five natures: 1. Aromatorum exoticorum of ſpices or drugs of outlandiſh growth. 2. Granorum of Corn of Engliſh growth. 3. Avium villaticarum, of Powltry, as Capons, Hens, &c. 4. Artificiorum, of handicrafts as a pair of Gloves generally either of outlandiſh or Engliſh. 5. Aut ſimilium, or ſuch like (that is) of like outlandiſh growth or of Engliſh growth or of Powltry, or of Artifices, Outlandiſh or Engliſh, and like herein alſo that they may be paid or delivered to the lord, every year, or every ſecond or third year, &c.

Sect. 129.

¶ Mes en aſcun caſe le ſeignior doit demurrer a deſtreiner pur ſon reliefe ſeſque a certaine temps. Sicome le ten̄ tient de ſon ſeignior per un Roſe, ou p un buſhel de Roſes, a paier al feaſt de Nativitie de Saint John Baptiſt, ſi tiel tenant devie en yver, donque le ſr̄ ne poit diſtr̄ p ſon reliefe tāque al tēps q̄ les Roſes p le courſe del an poiēt aū lour creſſer, &c. & ſic de ſimilibus.

But in ſome caſe the Lord ought to ſtay to diſtrein for his relief until a certain time. As if the tenant holds of his Lord by a Roſe, or by a buſhel of Roſes to pay at the feaſt of St. *John the Baptiſt*, if ſuch tenant dieth in winter, then the Lord cannot diſtrein for his relief until the time that Roſes by the courſe of the year may have their growth, &c. and ſo of the like.

¶ *Per le courſe del an.* Lex ſpectat naturæ ordinem, The Law reſpecteth the order and courſe of Nature. Lex non cogit ad impoſſibilia, The Law compels no man to impoſſible things. The argument ab impoſſibili is forcible in law, Impoſſibile eſt quod naturæ rei repugnat. And here it is to be obſerved, that Littleton puts a diverſitie between corn, and roſes, for corn will laſt, and therefore the Tenant muſt deliver the corn preſently before the time of growth, (as before is ſaid) and ſo of Saffron, and the like, but Roſes or other flowers, that are fructus fugaces, cannot be kept, and therefore are not to be delivered till the time of growing, neither is the Tenant driven by Law artificially to preſerve Roſes, for the Law in theſe caſes reſpecteth Nature, and the courſe of the year, as Littleton here ſaith, Et ars naturam imitatur, & ſic de ſimilibus.

Sect. 130.

¶ Item ſi aſcun voile demand, pur q̄ home poit tener de ſon ſeignior p fealty tantſolement p touts maners des ſerbices, entant que quant le tenant ferra fealty il jurera a ſon Seignior q̄ il ferra a ſon Sr̄ touts maners des ſerbices dues, & quant il ad

Alſo if any will aſk, why a man may hold of his Lord by fealty only for all manner of ſervices, inſomuch as when the tenant ſhall do his fealty, he ſhall ſwear to his Lord that he will do to his Lord all manner of ſervices due, and when he hath done fealty in

¶ *Quant le Tenant ferra fealty, il jurera a ſon Seignior, &c.* Here it appeareth, that the doing of the fealty is both a performance of his ſervice, and of his oath alſo when it is done, for that no other ſervice is due. And that one oath of fealty is taken of all that hold and is not to be changed for any novelty or nicety of invention, for Judges anciently and continually have ſuppreſſed innovations and would in no caſe change the ancient common Law.

31.E.3.tit. Gager deliverance 5.
38.E.3.f 42.Aſſ p.12.
4.E.3.ca.5.
18.E.3.ca.4.&.6.
4.H.4.ca.2.2.H.4.fo.18.

¶ *Ii*

¶ *Il covient que il doit faire a ſon Seignior aſcun ſervice.* For there can be no tenure without ſome Service becauſe the ſervice maketh the Tenure.

See of this in the Chapter of Fee ſimple, Sect. 4.

¶ *Son eſcheat de la terre.* Eſchaeta is derived of this word Eſchier, quod eſt accidere: For an eſcheat is a caſual profit, quod accidit Domino ex eventu, & ex inſperato, which happeneth to the Lord by chance and unlooked for. And of this word Eſchaeta cometh Eſchaetor, an Eſcheator, ſo called, becauſe his office is to inquire of all caſual profits, and them to ſeiſe into the Kings hands, that the ſame may be anſwered to the King.

See more of this in the Chapter of Warrantie, Sect.

Lands may eſcheat to the lord two manner of wates: one by attainder, the other without attainder. By attainder in three ſorts: Firſt, Quia ſuſpenſus eſt per collum. Secondly, Quia abjuravit Regnum. Thirdly, Quia utlegatus eſt: without attainder, as if the tenant dies without heir.

¶ *Ou per caſe auter forfeiture.* As if the land be aliened in Mortmain, or when Littleton wrote, if the Tenants had erected croſſes upon their houſes or Tenements, in prejudice of the Lords, that the Tenants might claim the privilege of the hoſpitlers to defend themſelves againſt their Lords, they had forfeited their Tenancies. But ſince Littleton wrote, the Hoſpitlers are diſſolved, and conſequently that forfeiture is gone.

W. 2. ca. 33. Flet. li. ca. 43. & lib. 5. ca. 34. 32. H. 8. ca. 24.

¶ *Ou profit.* As Reliefe, aide pur file marrier, aid pur faire fitz chivaler, and the like.

fait fealtie en tiel caſe nul auter Service eſt due. A ceo il poyt eſtre dit, Que iou un Tenant tient ſa terre de ſon ſeignior, il covient que il doit fair a ſon ſeignior aſcun ſerbice, car ſi le Tenant ne ſes heires devoyent faire nul manner de ſervice al ſeignior ne a ſes heires donque per long temps continue il ſerroit hors de memorie & de remembrance, le quel la terr fuit tenus de le ſeignior, ou de ſes heires, ou nemy, & donques pluis toſt & pluis redilment voilont hões dire que la terre neſt pas tenus del ſeignior ou de ſes heires, q̃ auterment: Et ſur ceo le ſeignior perdra ſon Eſcheat de la terre, ou per caſe ãuter forfeiture ou profit que il poet aver de le terre. Iſſint il eſt reaſon que le ſeignior & ſes heires ont aſcun ſerbice fayt a eux pur prober & teſtifier que la terre eſt tenus de eux.

this caſe no other Service is due. To this is may be ſaid, That where a Tenant holds his land of his Lord, it behooveth that he ought to do ſome ſervice to his Lord: For if the Tenant nor his heirs ought to do no manner of Service to his Lord nor his heirs, then by long continuance of time it would grow out of memorie, whether the Land were holden of the Lord, or of his Heirs, or not, and then will men more often and more readily ſay, That the Land is not holden of the Lord, nor of his Heirs, than otherwiſe: And hereupon the Lord ſhall loſe his Eſcheat of the Land, or perchance ſome other forfeiture or profit which he might have of the Land, So it is reaſon that the Lord and his heirs have ſome Service done unto them, to prove and teſtifie, That the land is holden of them.

Sect.

Sect. 131.

ET pur ceo que fealtie est incidēt a touts manners de tenures, forspris le tenure in Frākalmoign, (sicome serra dit en le tenur de Frākalmoign) & pur ceo q̄ le Seignior ne voiloit al commencemēt del Tenure aver alcun auter service forsque Fealty, il est reason que home poet tener de son seignior per Fealty tantsolement, & quant il ad fait son fealtie, il ad fait touts les services.

AND for that Fealtie is incident to all manner of Tenures but to the Tenure in Frankalmoigne, (as shall be said in the Tenure of Frākalmoign) and for that the Lord would not at the beginning of the Tenure have any other service but Fealty, it is reason that a Man may hold of his Lord by Fealty onely, and when he hath done his Fealty, he hath done all his Services.

FEaltie est incident.

Of Incidents there be two sorts, viz. separable, and inseparable.

Separable, as Rents incident to reversions, &c which may be severed: inseparable, as fealty to a reversion or tenure which cannot be severed: for as all lands and tenements within England are holden of some Lord or other, and either mediately or immediately of the King, so to every tenure at the least, fealty is an inseparable incident, so long as the tenure remains, and all other services, except Fealty, are severable. But where a tenure is by fealty only, there is no relief due for the cause above-said.

Sect. 132.

ITem si un home lessee a un auter pur terme d'vie certaine terres ou tenemēts saunz parler de alcun rent rend a le Lessor, uncore il ferra fealty a le Lessor, pur ceo que il tient de luy. Auxy si un lease soit fait a un hōe pur terme de ang, il est dit que le Lessee ferra Fealtie a le Lessor, pur ceo que il tient de luy. Et ceo est prove bien per les parols del brief de Wast, quaunt le Lessour ad cause de porter Briefe de Wast envers luy, le quel Briefe dira, que le Lessee tient des Tenements de le Lessor pur terme de ang,

ALso if a man letteth to another lands or tenemēts for term of life, without naming any rent to be reserved to the Lessor, yet he shall do fealty to the Lessor, because he holdeth of him. Also if a Lease be made to a man for term of years, it is said that the Lessee shall do fealty to the lessor, because he holdeth of him. And this is well proved by the words of the writ of wast, when the Lessor hath cause to bring a writ of wast against him, which Writ shall say, That the Lessee holds his Tenements of the Lessour for term of years. So the

SI un hōe lesse pur Terme de vie saunz parler de rent, &c. il ferra fealty, &c. And the reasons, because there is a Tenure, & fealtie as hath been said is incident to all manner of

v. Sect. 214.

tenures, and it is to be noted, that the law for the fealtie of

of the Lord, that his tenant shall be faithful and loyal to him, doth create such a service as the Tenant shall be bound thereunto by oath.

40.E.3.34.9.H.6.41. 10.H.6.13.9.E.4.1. 21.E.4.29.5.H.5.12. 5.H.7.11.

¶ *Auxi si lease soit fait pur ans, &c. le lessee ferra fealty.* For there also is a tenure between them. And Littletons opinion in this case is holden for good Law at this day.

Vid.Sect.84.

¶ *Et ceo est prove bien per les parols del briefe, &c.* Note, the original Writs are (as it were) the foundations and grounds of the Law, and as it appears here by Littleton, are of great authority for the proof of the Law in particular cases.

¶ *Pur ceo que il nad suer estate.* Therefore tenant at will shall not do Fealty (as hath been said before) because the matter of an oath must be certain. The rest of this Section needs no explication.

illint le briefe proua un tenure enter eux. Mes celuy que est tenant a volūt solonq; le course del common ley ne ferra fealtie, p̄ ceo que il nad ascun suer estat. Mes autrement est de tenant a bo;unt solonq; ꝑ custome del mano;, p̄ ceo que il est oblige pur faire fealtie a son Sñr pur deux causes: Lun est p̄ cause del custome: ꝛ lauter est, pur ceo q̄ il prist son estate en tiel fo;m pur faire a son Sñr fealty.

Writ proves a tenure between them. But he which is Tenant at will according to the course of the Common Law, shall not do Fealty, because he hath not any sure estate: but otherwise it is of Tenant at will according to the custom of the mannor, for that he is bound to do fealty to his Lord for two causes, the one is, by reason of the custom, and the other is for that he taketh his estate in such form to do his Lord Fealty.

CHAP. 6. Frankalmoigne. *Sect.*133.

Fract.lib.2.cap.5.& lib. 4.ca.2. Britton fo.164.165. Mirror ca.2.sect.18. Glanvil.lib.7.ca.1.& lib.12.ca.3.& 25. Flet. lib.3.ca.5.

¶ VN *Abbe, Prior, ou auter home de religion on de saint esglise.* It is to be observed that of Ecclesiastical persons some be regular, & some be secular. They be called regular, because they live under certain rules, and have vowed three things, true obedience, perpetual chastity, and wilful poverty. And when a man is professed in any of the orders of Religion, he is said to be home de religion, a man of religion, or religious. Of this sort be all Abbots, Priors, and others of any of the said orders regular. Secular are persons Ecclesiastical, but because they live not under certain rules of some of the said orders, nor are votaries

21.H.7.39.29.E.3.14.

4o.E.3.29.9.H.6.23. 7.E.4.12.12.H.8.8.

¶ Tenant en Frankalmoigne, est lou un Abbe ou Prior ou un auter hōe ỽ religiō ou ỽ saint Eglise, tiēt de son sñr en Frankalmoigne, q̄ est adir en Latin in liberam eleæmosynam. Et tiel tenure comment adeprimes en auncient temps en tiel fo;me; Quant un home en auncient temps fuit seisie ỽ certain terres ou tenements en son demesne come de fee,

Tenant in frankalmoigne, is where an Abbot or Prior, or another man of Religion, or of holy Church, holdeth of his Lord in Frankalmoigne: that is to say in Latin *in liberam Eleæmosynam*, that is, in free alms. And such tenure began first in old time when a man in old time was seised of the lands or tenements in his demesne as of Fee, and of the same land infeoffed

& de meſmes les terres ou tenements enfeoffa un Abbe & ſon Covent, ou un Prior, &c. a aver & tener a eux & lour ſucceſſors a touts jours en pure & perpetual almoign, ou en frankalm ou p tiels parols; A ten de le grantor ou de le feoffor, & de ſes heirs en frankalmoign: en tiels cales les tenements ſont tenus en frankalmoigne.

an Abbot and his Covent, or Prior and his Covent, to have and to hold to them and their ſucceſſours in pure and perpetual Alms, or in Frankalmoigne, or by ſuch words to hold of the grantor, or of the leſſor and his heirs in Free alms: In ſuch caſe the Tenements were holden in frankalmoigne.

they are for diſtinction ſake called ſecular, as Biſhops, Deans and Chapters, Archdeacons, Prebends, Parſons, Vicars, and ſuch like. All which Littleton here includeth under theſe general words, de ſaint Egliſe, of holy Church, and none of theſe are in Law ſaid to be homes de religion, or religious.

Where Littleton ſaith (infeoffa un Abbe & ſon Covent) his meaning is, that the Abbot only is infeoffed, for he is only a perſon capable, & the Covent are dead perſons in Law, and have power of aſſent only, & that they thereunto aſſent. But ſince Littleton wrote, all Abbeys, Priories, Monaſteries, and other religious houſes of Monks, Canons, Friers, and Nuns, &c. have been diſſolved, and their poſſeſſions given to the Crown.

See the ſtatutes of 27 H. 8. not printed, but in the abridgment 31.H.8. cap. 12. & 32.H.8.ca.24. &c. Vide ſect.530.

The Eccleſiaſtical ſtate of England, as it ſtandeth at this day (which is neceſſary for our ſtudent to know) is divided into two Provinces or Archbiſhopricks, (viz.) of Canterbury, and of York. The Archbiſhop of Canterbury is ſtyled, Metropolitanus & Primas totius Angliæ, And the Archbiſhop of York, Primas Angliæ. Each Archbiſhop hath within his Province ſuffragan Biſhops of ſeveral Dioceſſes. The Archbiſhop of Canterbury hath under him within his Province, of ancient foundations, viz. Rocheſter, his principal Chaplain, London his Dean, Wincheſter his Chancellor, Norwich, Lincoln, Ely, Chicheſter, Salisbury, Exeter, Bathe and Wells, Worceſter, Coventry and Lichfield, Hereford, Landaff, St. David, Bangor, and St. Aſaphe, and four founded by King Henry 8. erected out of the ruines of diſſolved Monaſteries (that is to ſay) Glouceſter, Briſtow, Peterborow, and Oxford. The Archbiſhop of York hath under him four, (viz.) the Biſhop of the County Palatine of Cheſter newly erected by King H.8. and annexed by him to the Archbiſhoprick of York, the County Palatine of Durham, Carlile, and the Iſle of Man annexed to the Province of York by H.8. but a greater number this Archbiſhop anciently had which time hath taken from him. The extent of every Dioceſs you may elſewhere read, the which for brevity I here omit. All the ſaid Archbiſhopricks & Biſhoprieks of England were founded by the Kings of England, to hold by Barony, as hereafter ſhall be ſaid. *And every Archbiſhop and Biſhop hath his Dean and Chapter, whereof more ſhall be ſaid hereafter. The Archbiſhop of Canterbury hath the precedency; next to him the Archbiſhop of York, next to him the Biſhop of London, and next to him the Biſhop of Wincheſter, and then all other Biſhops of both Provinces after their ancientneſs.

Math. Parker de vitis Archiepiſcoporum. Linwood. Camden Britannia. Vid. Rot. Parliam. anno. 36.H.8.1.E.6.5.E.6.&c. Weſtminſter alſo was newly erected a Biſhoprick by H. 8. but by Queen Mary it was reſtored to be an Abby, & by Queen Eliz. created a Deanry Collegiate. Cheſter had been anciently a Biſhops ſea and long ſince tranſlated to Coventry. 33.H.6.ca.31. Camden ubi ſupra. 26.H.8. firſt fruits and tenths. Vid. Sect. 137. *Lib.3.f.b.73. Dean and Chap. of Norwich caſe. Vide ſect. 134. 201. 31.H.8.cap.10.

Every Dioceſs is divided into Archdeaconries, whereof there be 60. and the Archdeacon is called oculus Epiſcopi, and every Archdeaconry is parted into Deanries, & Deanries again into Pariſhes, Towns and Hamlets. And thus much for the better underſtanding of our author, and how the ſtate Eccleſiaſtical ſtandeth at this day, ſhall ſuffice.

Vide more hereof, ſect. 180.528.648.&c.

¶ *Frankalmoign, que eſt adire en Latine, in liberam Eleemoſynam.* In Engliſh free alms. There is an officer in the Kings houſe called Eleemoſynarius vulgarly called the Kings Almner (whoſe office and duty is excellently deſcribed in ancient Authors,) viz. fragmenta diligenter colligere & diligenter diſtribuere ſingulis diebus egenis: ægrotos, & leproſos, incarceratos, pauperesque viduas, & alios egenas vagoſque in patria commorantes charitative viſitare; item equos relictos, robas, pecuniam, & alia ad Eleemoſynam largita recipere, & fideliter diſtribuere, debet etiam regem ſuper Eleemoſynæ largitione crebris ſummonitionibus ſtipulare, præcipue diebus Sanctorum, & rogare ne robas ſuas, quæ magniſunt pretii, hiſtrionibus, blanditoribus, accuſatoribus, ſeu meneſtrallis, ſed ad Eleemoſynæ ſuæ incrementum jubeat largiri.

Fleta lib.2.cap.23.

All Eccleſiaſtical perſons may hold in Frankalmoign be they ſecular or regular, and no lay perſon can hold in frankalmoign. This adjective (liber) doth diſtinguiſh many things in law from others, as here libera Eleemoſyna are words appropriated to this caſe, and do diſtinguiſh it from a tenure by divine ſervice, liberum tenementum from a tenure in villenage, or by copihold, or baſe tenure, liberum feodum frank fee, from a tenure in ancient Demean, liberum

Vide Sect. 1. Bract. lib. 4. c. 37. 38. Britton cap. 32.

Britton cap 66. Bract.lib.4.F.N.B.150. Bract.lib.4.fol.288.247. 292.Britton fol 245. Fleta lib.5.cap.11. Fortesc.c.26.21.E.3.34. 43.E.3.conspir.11. 27.Ass.59.Stant.175. Vide Sect.199. Fleta lib.1.cap.47.

berum maritagium from other estates taile, libera firma, frank ferme, when an estate is changed from Knights service to socage, liberum socagium, from a tenure by service in chivalry. Francus bancus to distinguish it from other Dowers, for that it cometh freely without any act of the husbands, or assignment of the heir. Libera lex, to distinguish men, who enjoy it, and whose best and freest birthright it is, from them, that by their offences have lost it, as men attainted in an attaint, in a conspiracy upon an Indictment, or in a Premunire, &c. And so of libera capella, francus plegius, frankpledge, libera chacce, free chase, liber burgus, liber aper, liber taurus, and the like. But in a matter (some will say) of curiosity, this shall suffice, and yet seeing it tends to the better understanding (others say) it is tollerable.

Glanvill lib.7.ca.1.fo.44. 45.acc.

By the ancient common law of England, a man could not alien such lands as he had by descent, without the consent of his heir, yet he might give a part to God in free Almoigne, or with his daughter in fee marriage, or to his servant in remuneratione servitii. Our old books describe Frankalmoign thus, when Lands or Tenements were bestowed upon God, (that is) given to such people as are consecrated to the service of God. In our ancient books these Gifts of Devotion were called Churchesset, or Churchseed, quasi semen Ecclesiæ, but in a more particular sence, it is described thus. Certam mensuram bladi tritici significat, quam quilibet olim sanctæ Ecclesiæ die sancti Martini tempore tam Britonum quam Anglorum contribuerunt: plures tamen Magnates post Romanorum adventum illam contributionem secundum veterem legem Moisi nomine primitiarum dabant, prout in brevi Regis Knuti ad summum Pontificem transmiss' continetur, in quo illam contributionem Churchseed appellant quasi semen Ecclesiæ.

Britton ca.66. fol.164. Bract.lib.2 cap.5.& 10. F.N.B.211.

¶ *Et tiel tenure.* For albeit neither fealty, nor any other temporal service is due yet it is a tenure.

Fleta lib. .cap.42.

7.E.4.12.33.H.6.7. 29.H.6.29. (a) Mortmaine. Britton fol.32.& 90. Bracton lib.2 cap.5. Fleta lib.3. cap.5. 11.H.7.12.

¶ (a) *En ancient temps.* That is to say before the statutes of Mortmain, viz, Magna Charta cap. 36. & 7.E.1. de religiosis, &c. and before the statute of Quia emptores terrarum, it shall be hereafter in his proper place said in this chapter.

¶ *Enfeoffa un Abbe & son Covent, &c.* Albeit the coven be dead persons in law, and the Abbot only capable (as before is said) yet if the Feoffment be made to an Abbot and Covent, the Feoffment is good, and the state vesteth only in the Abbot. And note a man may infeoffe an Abbot, a Bishop, a Parson, &c. or any other sole body politique by deed, or without deed, in free Alms, and so may a gift in frankmarriage be made without deed also: but if lands be given to a Dean and chapter, or any other corporation aggregate of many, there the gift must be by deed.

39.H.6.30.b.

¶ *A aver & tener a eux & a lour successors.* For in case of an Abbot or Prior and Covent regularly a Fee simple doth not pass without these words (successors) in the diversity standeth thus between a corporation aggregate of many capable persons, and a sole corporation. As if lands be given to a Dean and chapter, they have a fee simple without these words (successors) for that the body never dies, but if lands be given to a bishop, Parson, or any other sole corporation, who after their deceases have a succession, there without these words (successors) nothing passeth unto them but for life. But of corporations aggregate of many, there is a diversity when the head and body both are capable, as in the case of Dean and chapter, and when one (as hath been said) is only capable, as in the case of Abbot or Prior and Covent, but yet out of the general Rules, the case of Frankalmoign is excepted, as hereafter shall be said. Also Lands must be given to a corporation aggregate of many by Deed, but to a sole corporation it may be granted without Deed.

Vid.Litt.in the Chapter of Fee simple, Sect.1.2.

39.H.6.30.

Bracton lib. 2. cap. 10. Potest donatio fieri in liberam Eleemosinam Ecclesiis Cathedralibus, Conventualibus, Parochialibus & viris religiosis.

35.H.6.56.7.E.4.11. Vid.Bracton.lib.2.ca.10.

¶ *En pure & perpetuall almoigne.* Here it appeareth that a tenure in Frankalmoigne may be created without this word (libera) for pura implieth as much.

35.H.6.56.7.E.4.11. Bract.ubi supr.44.E.3.24

¶ *Ou en Frankalmoigne.* But one of these words either pura, or libera, must be used, or else it is no tenure in Frankalmoigne.

20.H.6.fol.36.

¶ *Ou per ceux parolx a tener de le grantor ou feoffor & ses heires en Frankalmoigne.* Here it appeareth that by these words a fee simple passeth without these words (successors) albeit it be in case of a sole corporation. For as in case of a gift in Frankmarriage, an Estate taile passeth to the Donees without words of heirs of their bodies, as hath been said in the chapter of Fee taile, so in case of a gift in Frankalmoigne (which may be resembled to a divine marriage) a Fee simple passeth, as hath been said though it be in case of a sole corporation) without this word (successors.) And besides, Grants in Frankalmoigne are ancient Grants as hath been said, and therefore shall be allowed, as the law was taken, when such Grants were made.

28.E.3.4.2.14.H.6.12. 10.H.7.13.16.H.7.9. 18.E.3.conusans 39. 33.H.6.22.17.E.3.51. 6.E.3.54.&c. Tr.5.E.3.Rot.4.in Scaccario. The Prior of Dunstables case.

Section

Sect. 134.

¶ EN Meſme le manner eſt, lou terres ou tenements ſueront grant en ancient temps a un Deane & Chapter, & a lour ſucceſſors, ou a un Parſon dun Eſglis, & a les ſucceſſors, ou a alcun auter hõe de ſaint Eſglis, & a ſes ſucceſſors en frankalmoigne ſi il avoit capacity dapprendr tiels grants ou feoffments, &c.

IN the ſame manner it is where Lands or tenements were granted in ancient time to a Dean and Chapter, and to their Succeſſors, or to a Parſon of a Church & his ſucceſſors, or to any other man of holy Church, and to his ſucceſſours in Frankalmoigne, if he had capacity to take ſuch graunts or feoffments, &c.

¶ *EN Meſme le Manner, &c.* Here Littleton having put an example of bodies incorporate aggregate of many whereof the head is only capable, now putteth examples both of bodies incorporate, aggregate of many (all being capable) and of ſole Corporations of ſecular perſons.

¶ *Deane.* Decanus is derived of the Greek word Δεκας that ſignifieth Ten, for that he is an Eccleſiaſtical ſecular Governour, and was anciently over ten Prebends, or Canons at the leaſt in a Cathedral Church, and is head of his Chapter.

¶ *Chapter.* Capitulum eſt Clericorum congregatio ſub uno Decano in Eccleſia Cathedrali. And Chapters be twofold, viz. the Ancient, and the Later. And the later be alſo of two ſorts, firſt, thoſe which were tranſlated or founded by King Henry the Eight, in place of Abbots and Covents, or Priors and Covents, which were Chapters whiles they ſtood, and theſe are new Chapters to old Biſhopricks. Secondly, where the Biſhoprick was newly founded by Henry the Eight (as Cheſter, Briſtow, &c.) there the Chapters are alſo new. There is a great diverſity between the commings in of the ancient Dean, and of the new. For the ancient come in, in much like ſort as Biſhops do: for they are choſen by the Chapter, by a Conge de eſlier, as Biſhops be, and the King giving his Royal aſſent, they are confirmed by the Biſhop. But they which are either newly tranſlated, or founded, are Domatyr, and by the Kings Letters Patents are inſtalled, which are matters neceſſary to be known.

¶ *Sil avoit capacitie a prender.* For Eccleſiaſtical perſons have not capacity to take in ſucceſſion, unleſſe they be bodies Politique, as Biſhops, Arch-deacons, Deanes, Parſons, Vicars, &c. or lawfully incorporate by the Kings Letters Patents, or preſcription, as Deans and Chapters, Colledges, &c. But a Colledge of Religious Perſons, Chauntry Prieſts, and ſuch like, that are not lawfully incorporated, but only conſiſt in vulgar reputation, have no capacity to take in ſucceſſion, therefore Littleton added materially (ſil ad capacitie a prender.)

Sect. 135.

¶ ET tiels que teignont en frankealmoigne ſont oblige de dꝛoit devant dieu de fair oꝛiſons, pꝛaiers, meſſ & autres divine ſerbices pur les almes de lour grantoꝛ ou feoff. & pur les almes de lour heires

AND they which hold in Frankalmoigne, are bound of right before God, to make Oriſons, Prayers, Maſſes, and other divine ſervices for the ſouls of their grantor or feoffor, and for the ſoules of their heires

¶ IN this Section there appeareth a diviſion of Tenures, that is to ſay, ſome be ſpirituall, & ſome be temporal. And of ſpirituall ſome be incertain, as tenures in Frankalmoigne, and ſome be certain, as tenures by divine Service. Again, divine ſervice certaine is two fold, either ſpirituall, as Prayers to God, or temporall, as diſtribution of Alms to poor people.

¶ *Oblige de droit.* That is they are compellable by the Eccleſiaſtical law to do it, and therefore it is ſaid that they are bound of right (for want of remedy, & want of right is all one) and the Common Law (as here it appeareth) taketh knowledge of the Eccleſiaſtical Law in that behalf.

¶ *De faire Oriſons, Prayers, Meſſes, & auters Divine Services.*

Since Littleton wrote, the Liturgie or Book of Common Prayer and of Celebrating Divine Service is altered, this alteration notwithſtanding, yet the tenure in Frankalmoigne remaineth, and ſuch Prayers and Divine Service ſhall be ſaid and celebrated, as now is authoriſed, yea, though the tenure be in particular, as Littleton (a) hereafter ſaith, viz. A Chaunter un meſſe, &c. ou a Chaunter un placebo & dirige, yet if the Tenant ſaith the Prayers now authoriſed, it ſufficeth. And as Littleton (b) hath ſaid before in the caſe of Socage, the changing of one kinde of temporal ſervices into other temporall ſervices, altereth neither the name nor the effect of the Tenure: ſo the changing of ſpiritual ſervices into other ſpiritual ſervices, altereth neither the name nor effect of the Tenure: And albeit the Tenure in Frankalmoigne is now reduced to a certainty contained in the Book of Common Prayer, yet ſeeing the Original Tenure was in Frankalmoigne, and the change is by generall conſent by authority of Parliament, (c) whereunto every man is party, the Tenure remains as it was before.

(a) Vide Sect. 137.

(b) Vide Sect. 119.

(c) 2 E.6.c.1.5.& 6.E.6. cap.1. 1.Eliz.ca.2.

¶ *Ne ferront aſcun fealtie.* Herein Tenant in Frankalmoigne differeth from a Tenant in Frankmariage, for Tenant in Frankmariage ſhall do fealty, as hath been ſaid in the Chapter of Fee taile, but Tenant in Frankalmoigne, ſhall not do any, or any other thing, but devota animarum ſuffragia.

¶ *Tiel divine ſervice eſt melieur pur eux.* And it is alſo ſaid in our books (d) Que Frankalmoigne eſt le pluis haute ſervice, and this was confeſſed by the heathen Port.

(d) 33.H.6.6. 13.E.1.tit. count de voucher. 118.

——fuit hæc ſapientia quondam
Publica privatis ſecernere, ſacra profanis.

And certain it is, that Nunquam res humanæ proſperè ſuccedunt ubi negliguntur divina.

queux ſont morteſ, & pur le proſperitie & bon vie & bon ſalute de lour heires q̃ ſont en vie. Et pur ceo ils ne ferront a nul tẽps aſcun fealtie a lour Seignior, pur ceo q̃ tiel divine ſervice eſt meliour pur eux devant dieu que aſcun fealans de fealtie, & auxi pur ceo que ceux paroir (Frankealm̃) exclude le Seignior daver aſcun terrein ou temporall ſervice, mes daver tantſolement divine & ſpiritual ſervice deſtre fait pur luy, &c.

which are dead, and for the proſperity and good life, and good health of their heirs which are alive. And therefore they ſhall do no fealty to their Lord, becauſe that this divine Service is better for the before God then any doing of fealty, and alſo becauſe that theſe words (Frankalmoigne) excludeth the Lord to have any earthly or temporal Service, but to have only Divine and Spiritual Service to be done for him, &c.

Sect. 136.

¶ *Le ſeignior ne poet eux diſtreiner pur ceſt non feaſant, &c.*

¶ *Diſtreine.* The

¶ Et ſi tiels que teignont lour tenements en Frankalmoigne ne voilont ou failont de faire tiel

And if they which hold their Tenements in frankalmoign will not or faile to do ſuch divine ſervice (as

Di-

divine ſervice (cõe eſt dit) le ſñr ne poit eux diſtrainer ꝑ cel non feſant, &c. pur ceo que neſt miſe en certaine quelx ſervices ils doient faire, meſ̃r le ſñr de ceo poit complaine a lour Ordinary ou viſitour, luy prayant que il voiloit mitter punishment & correction ſur ceo, & aury de prouider q̃ tiel negligence ne ſoit pluis a-vãt fait, &c. Et lordinary ou viſit̃ de droit ceo doit faire, &c.

is ſaid) the Lord may not diſtrain them for not doing this, &c. becauſe it is not put in certainty what ſervices they ought to do: but the Lord may cõplaine of this to their Ordinary or viſitours praying him that he will lay ſome puniſhment and correction for this, and alſo provide that ſuch negligẽce be no more done &c. And the ordinarie or Viſitor of right ought to do this, &c.

word diſtreſs, is a French word, in Latine it is called diſtrictio, ſine anguſtia; becauſe the cattel diſtrained are put into a ſtraît, which we call a pound.

¶ *Pur ceo que neſt miſe en certaine queux ſervices ils doient faire.* It is a maxime in law, that no diſtreſs can be taken for any ſervices that are not put into certainty (e) nor can be reduced to any certainty, for, If certum eſt, quod certum reddi poteſt; for (f) oportet quod certa res deducatur in judicium: and upon the avowry, Damages cannot be recovered for that which neither hath certainty, nor can be reduced to any certainty; & yet in ſome caſes there may be a certainty in uncertainty; as a man may hold of his Lord to ſheere all the ſheep depaſturing within the Lords Mannor, and this is certain enough, albeit the Lord hath ſometime a greater number, and ſometime a leſſer number there, and yet this uncertainty being referred to the Mannor which is certain, the Lord may diſtrain for this uncertainty. Et ſic de ſimilibus.

(e) 35.H.6.37. Br.tit.offic.4. 8.E.2.3.66. 20.E.3.Avowry 131.
(f) Bracton.fol.230. & 328.
7.E.3.38.

¶ *Poet complayner.* That is, to complain in courſe of Juſtice, according to the Eccleſiaſtical Law.

¶ *A lour ordinarie.* Ordinarius, and ſo he is called (g) in the Eccleſiaſtical law, Quia habet ordinariam juriſdictionem in jure proprio, & non per deputationem: the name we have anciently taken from the canonists, and do apply it onely to a Biſhop or any other that hath ordinary juriſdiction in cauſes Eccleſiaſtical: In this caſe of Littleton it is to be obſerved, that the Law doth appoint every thing to be done by thoſe, unto whoſe office it properly appertaineth, and forasmuch as it belongeth to the office of the Ordinary in this caſe to ſee divine Service ſaid, and to compel them to dot it by Eccleſiaſticall cenſures, therefore complaint is to be made unto him. Here, and in the next Section it appeareth, that for deciding of controverſies, and for diſtribution of Juſtice within this Realm, there be two diſtinct Juriſdictions, the one Eccleſiaſtical, limited to certaine ſpirituall and particular caſes (of the one wherof our Author here ſpeaketh) and the Court wherein theſe cauſes are handled, is called Forum Eccleſiaſticum. The other Juriſdiction is ſecular and general, for that it is guided by the common and generall Law of the Realm, Quæ pertinet ad coronam & dignitatem regis, & ad regnum in cauſis & placitis rerum temporalium in foro ſeculari. So as in this caſe put by our Author, the Lord hath remedy for his Divine Service albeit they iſſue out of temporal lands) in foro Eccleſiaſtico, by the Eccleſiaſtical Law, otherwiſe the Lord ſhould be without remedy. Yet the Common Law, to the intent that Eccleſiaſtical perſons might the better diſcharge their duty in celebration of Divine ſervice, and not to be intangled with temporal buſineſſe, hath provided, that if any of them be choſen to any temporal Office, he may have his Writ De clerico infra ſacros ordines conſtituto non eligendo in officium, &c. and therof be diſcharged.

(g) Mirror.ca.5.Sect. Bracton lib.5.fo.405.&c. Fleta lib.2. ca.50.& 53. & lib.6.ca.38. Britton.fo.69,70. W.2.ca.19. 17.E.2.bre.822. Regiſt.141.Lindwood, tit.de Conſtit.cap. exter. Bract.lib.5.ca.2. fo.400.& 401. and the other Authors aboveſaid

Regiſt. orig.187.

¶ *Ou Viſitor.* That is, where the King or any of his Progenitors is Founder of the houſe, there the Ordinary regularly ſhall not viſit them, but the Chancellour of England is appointed by law to be Viſitor of them, or where a ſpecial Viſitor is appointed upon the foundation, the complaint muſt be made to that Viſitor.

27.E.3.84,85. Regiſt.40. F.N.B.42.10. Eliz. Dier. 273.16.E.3. bre.660. 21.E.3.60. 6.H.7.12. 8.Aſſ.29.Brooke tit. Premunire 21.

¶ *De droit doit ceo faire.* De droit, of right, (that is to ſay) he ought to do it by the Eccleſiaſtical Law, in the right of his office.

And here is implyed a Maxime of the Common Law, that where the right (as our Author here ſpeaketh) is ſpirituall, and the remedy therefore only by the Eccleſiaſtical Law, the conuſans therof doth appertain to the Eccleſiaſtical Court.

Sect.

Sect. 137.

2.E.3.17,28.

¶ PEr certaine Divine ſervice deſtre fait, ſicome a chaunter un meſſe, &c. ou de diſtributer en Almoign, &c. Here be the two parts above mentioned, of divine Service, and for this Divine Service certaine, the Lord hath his remedy, as here it appears by our Author in foro ſeculari: for here it appears, that if the Lord diſtreine for not doing of divine ſervice, which is certain, he ſhall upon his Avowry recover dammages at the Common Law; that is, in the Kings Temporal court, for the not doing of it. And if iſſue be taken upon the performance of the Divine Service, it ſhall be tried by a Jury of twelve men, becauſe albeit the ſervice be Spiritual, yet the dammages are Temporal, and ſo is the Seigniory alſo.

33.H.6.26,27.

And here is implyed another Maxime of the Law, that where the common or ſtatute law giveth remedy, in foro ſeculari, (whether the matter be Temporal or Spiritual) the conuſans of that cauſe belongeth to the Kings Temporal courts only, unleſs the juriſdiction of the Eccleſiaſticall court be ſaved or allowed by the ſame Statute, to proceed according to the Eccleſiaſtical laws.

2.E.6.ca.13.verſus finem 13.E.3.ca.5. 11.H.7.c.8. 1.El.ca.2.13.El.ca.1. 23.E.ca.1.1.Ja.c.11. & 12.

¶ *Ou de diſtributer en almoigne al cent pours homes.* Here note that that Almes and Reliefe of poore people being a work of charity, is accounted in law divine ſervice, for what herein is done to the Poor, for Gods ſake, is done to God himſelfe.

¶ *Poet diſtrein, &c.* Here (&c.) includeth many

¶ MEs ſi un Abbe ou Prior tient de ſon Seignior per certaine divine ſervice en certaine deſir fait, ſicome a chaunter un meſſe chelcun bens die en le ſemaine pur les Almes, ut ſupra, ou chelcun an a tiel jour a chaunter placebo & dirige, &c. ou de trober un chapleine de chanter meſſe, &c. ou de diſtributer en Almoigne al cent pours homes cent deniers a tiel jour, en tiel caſe, ſi tiel Divine ſervice ne ſoit fayt le ſeignior poet diſtreyner, &c. pur ceo que le Divine ſervice eſt miſe en certaine per lour Tenure, que le Abbee ou Prior devoit fair. Et en tiel caſe le ſeignior avera Fealtie, &c. come il ſemble. Et tiel Tenure ne paſſe dit Tenure en Frankalmoigne, ems eſt dit Tenure per Divine ſervice, car en Tenure en Frankalmoigne nul mention eſt fait daſcun manner de ſervice, car nul poet tener en Frankealmoigne

But if an Abbot or Prior holds of his Lord by a certaine divine Service, in certaine to be done, as to ſing a Maſſe every Friday in the week, for the Souls, *ut ſupra*, or every year at ſuch a day to ſing a *Placebo & Dirige*, &c. or to find a Chaplain to ſing a Maſſe, &c. or to diſtribute in almes to an hundred poor men an hundred pence at ſuch a day. In this caſe if ſuch Divine Service be not done, the Lord may diſtreyne, &c. becauſe the Divine Service is put in certaine by their Tenure, which the Abbot or Prior ought to do. And in this caſe the Lord ſhal have Fealty, &c. as it ſeemeth. And ſuch Tenure ſhall not be ſaid to be Tenure in Frankealmoigne, but is called Tenure by Divine Service: For in Tenure in Frankealmoigne, no mention is made of any manner of Service: For none can hold in Frankealmoigne, if there be expreſſed any manner

moigne

moigne, ſi ſoit expreſſe alcun manñ ď ſtant ſervice que il doit faire, &c.

of certain Service that he ought to do, &c.

excellent things, as when, where, and what may be diſtreyned, of all which there is a taſte given in their proper places.

¶ *En tiel caſe le Seignior avera fealtie, &c. come ſemble.* For as it hath been ſaid, Fealty is incident to every Tenure, ſaving the Tenure in Frankalmoigne, and where the Lord may diſtreine, there is fealty due. And Britton calleth this Tenure (by Divine Service) Aumone, and not libera Eleemoſyna. And, ſaith he, Tenure en aumone eſt terre ou tenement que eſt done a aumone, dount aſcun ſervice eſt retenue al feoffor. Brit.fo.164.

¶ *&c.* And here (&c.) implyeth Diſtreſs, Eſcheat, and the like.

¶ *Et tiel Tenure neſt paſſe dit tenure en Frankalmoigne, eins eſt dit tenure per Divine ſervice, &c.* And therefore our old Book divided Spiritual ſervice into free almes, (which was free from any limitation of certainty) and almes, becauſe the Tenants were bound to certain Divine ſervices. 23.H.6.fol.8. Brit.ca.66.

¶ *Sil ſoit expreſs aſcun manner de certaine ſervice.* This holdeth where the certainty is reſerved upon the Original Grant. If lands were given to hold in libera Eleemoſyna, reddendo a rent, it ſeemeth the reſervation of the rent to be void, * becauſe it is repugnant and contrary to the former grant, in libera Eleemoſyna. 13.E.1.Count de Vouch 118. * 13.H.4.tit. Meſne 74. 30.E 3.30.19.E.2.Avowrie 224.32.E.1.Taile 31.

Vide Trin. 4. E. 3. and F. N. B. 231. f. That an Abbot or Prior that hold in Frankalmoigne, ſhall not be charged with a Corody. Alſo Lands holden in Frankalmoigne cannot (l) be ancient Demeſne, in reſpect of charges incident thereunto. 26.Aſſ.66. 4.H.6.17. Trin.4.E.3.F.N.B.252.f. 15.E.3.Corody.4. 11.Aſſ.22.50.Aſſ.Pl.C. (l) 32.E.1.ant.Dem.39. 8.E.3.5.

¶ *Que il doit faire, &c.* Here by (&c.) is underſtood Temporal or Spiritual Service alſo which he ought to do corporally, or render, or pay.

There were within this Realme of England one hundred and eighteen Monaſteries, founded by the Kings of England, whereof ſuch Abbots and Priors as were founded to hold of the King per Baroniam, and were called to the Parliament by Writ, were Lords of Parliament, and had places and voices there: * And of them there were twenty ſeven Abbots and two Priors, as by the Rolles of Parliament appears: But ſince our Author wrote, all theſe (as hath been ſaid) are diſſolved. King Stephen did found the Abby of Feverſham in Kent, Et dedit Abbati & Monachis, & ſucceſſoribus ſuis Manerium de Feverſham in Com. Kanciæ, ſimul cum Hundredo, &c. tenendum per Baroniam, &c. A Who albeit he held by a Barony, yet becauſe he was never (that I (m) find) called by writ, he never ſate in Parliament. *For example, Rot. Parl. 5.H.8.& 21.H.8. &c. (m) Cãc.Paſ.20.E.1. cor. rege this foundation is ſo pleaded.

All the Archbiſhops, and biſhops of England have been founded by the Kings of England, and do hold of the King by Barony (as before hath been ſaid) and have been all called by writ to the Court of Parliament, and are Lords of Parliament: As (amongſt many) taking one notable Record, (o) Mandatum eſt omnibus Epiſcopis, qui conventuri ſunt apud Glouceſtriam, die Sabbathi in Craſtinum Sanctæ Katherinæ, firmiter inhibendo quod ſicut Baronias ſuas quas de Rege tenent, diligunt, nullo modo præſumant conſilium tenere de aliquibus quæ ad Coronam Regis pertinent, vel quæ perſonam Regis, vel ſtatum ſuum, vel ſtatum concilii ſui contingunt, ſciturí pro certo, quòd ſi fecerint, Rex inde ſe capiet ad Baronias ſuas. Feſte Rege apud Hereford, 23. Novemb. &c. And the biſhoprics in Wales were founded by the Princes of Wales: and the Principality of Wales was holden of the King of England, as of his Crown: And when the Prince of Wales committed Treaſon, Rebellion, &c. The Principality was forfeited, and the Patronages of the Biſhops annexed to the Crown of Englands ſo as the King is to have Penſions for his Chaplains, and Corodies for his Cadelets, of them, as of Biſhops founded by himſelf. And vide Mich. 10. H. 4. Rot. 60. Wallia coram Rege, that the Jugement was given accordingly againſt the Biſhop of Saint Davids in Wales, Per Juſticiarios de utroque Banco & alios de perito concilio Domini Regis. And the Biſhops of Wales are alſo called by Writ to Parliament, and are Lords of Parliament, as Biſhops of England be. (o) Ex Rot. pat. de anno 18.H.3.M.17. 10.H.4.fo.6.b.

Sect. 138.

¶ Item ſi ſoit demand, ſi teñ en frankmariage ferra fealtie a le doñ ou a

Alſo if it be demanded, if tenant in frankmariage ſhall do fealtie to the do-

¶ *E quel ſerra inconvenient, &c.* An argument drawn from an inconvenience, is forcible in law, as hath been obſer- V. Sect.87.134.201.269. 440.478.665.721.

ved before, and shall be often hereafter. Nihil quod est inconveniens, est licitum. And the law that is the perfection of reason, cannot suffer any thing that is inconvenient.

40.Ass.27.

It is better, saith the law, to suffer a mischiefe (that is peculiar to one) then an inconvenience that may prejudice many: See more of this after in this chapter.

Littleton f.).50.b. 42.E.3.5. 28.E.3.395. 20.H.6.28.

Note, the reason of this diversitie, between Frankalmoigne and Frankmariage, standeth upon a maine Maxime of Law, that there is no land, that is not holden by some service spiritual or temporal, and therefore the Donee in Frankmariage shall do fealty, for otherwise he should do to his Lord no service at all, and yet it is frankmariage, because the Law createth the service of Fealty for necessity of reason, and avoiding of an inconvenience. But tenant in Frankalmoigne doth spiritual and divine service, which is within the said Maxime, and therefore the law will not cohort him to do any temporal service. See the next section.

¶ *Et encounter reason.* And this is another strong argument in Law, Nihil quod est contra rationem est licitum. For reason is the life of the Law, nay the common law it selfe is nothing else but reason, which is to be understood of an Artificial perfection of reason, gotten by long study, observation, and experience, and not of every mans naturall reason, for, Nemo nascitur artifex. This legal reason, est summa ratio. And therefore if all the reason that is dispersed into so many severall heads were united into one, yet could he not make such a law

les heires devant le quart degree passe, &c. il semble que cy. Car il nest pas semble quant a cel entēt a tenant en frankalmoigne, pur ceo que tenant en frankalmoigne serra, p cause de sa tenure, Divine service pur son Sñr come devant est dit, & ceo il est charge a faire p la ley del saint eglise, & pur ceo il est excuse & discharge de fealtie, mes tenant en frankemariage ne serra pur son tenure tiel service, & sil ne serra fealtie. donqs il ne serra a son Seignior alcun mäner de service, ne spirituall ne temporal, le quel serroit inconvenient & encount reason que home serra Tenant destate denheritance, a un auter, & uncore p sñr avera nul manner de service de luy, & issint il semble que il serra fealtie a son sñr devant le quart degree passe. Et quät il ad fait fealty il ad fait touts ses services.

nor or his heirs before the fourth degree be past, &c. it seemeth that he shall, for he is not like as to this purpose to tenāt in frankalmoign, for tenant in frankalmoign by reason of his tenure shall do divine service for his Lord, (as is said before) and this he is charged to do by the Law of holy Church, and therefore he is excused and discharged of fealty, but tenant in frankmariage shal not do for his tenure such service, and if he doth not fealty, he shal not do any manner of service to his Lord neither spiritual nor temporal, which would be inconvenient, and against reason, that a man shall be tenant of an estate of inheritāce to another, & yet the Lord shall have no manner of service of him, And so it seems he shall do fealty to his Lord before the fourth degree be past. And when he hath done fealtie, he hath done all his services.

as the Law of England is, because by many succession of ages it hath been fined and refined by an infinite number of grave and learned men, and by long experience grown to such a perfection, for the government of this Realm, as the old rule may be justly verified of it. Neminem oportet esse sapientiorem legibus: No man (out of his own private reason) ought to be wiser than the Law, which is the perfection of reason.

Sect.

Sect. 139.

ET ſi vn Abbe tient de ſon ſeignior en frankalm. et Labbe et le covent ſouth lour common ſeale alien meſmes les tenements a un ſeculer home en fee ſimple, en ceo cas le ſeculer home ferra fealtie a l' Seignior, pur ceo que il ne poit tener de ſon Sñr en frankalmoigne. Car ſi le ſeignior ne doit aver de luy fealty, donque il avera nul manner ſervice, que ſerroit inconvenient, ou il eſt Sñr, & le tenement eſt tenus de luy.

AND if an Abbot holdeth of his lord in frankalmoign, and the Abbot and Covent under their cõmon ſeal alien the ſame Tenements to a ſecular man in fee ſimple, In this caſe the ſecular man ſhall do fealty to the Lord, becauſe he cannot hold of his Lord in Frankalmoigne, for if the Lord ſhould not have fealty of him he ſhould have no manner of ſervice, which ſhould be inconvenient where he is Lord, and the tenements be holden of him.

¶ This caſe is worthy of great obſervation, for hereby it appeareth, that albeit the Alienors held not by tealty nor any other terrene ſervice but only by ſpiritual ſervices and thoſe incertain, yet the alienee ſhall hold by the certain ſervice of Fealty (and of this opinion is Littleton, agreeable with our books in former Authorities) for the law createth a new temporal ſervice out of the land to be done by the Alienee, wherewith the Abbot was not formerly charged, for the avoyding of an inconvenience, viz. that the Feoffee ſhould do no manner of ſervice, and conſequently that the land ſhould be holden of no man, wherein it is to be remembred that (as hath been ſaid before) all the lands and tenements in England in the hands of any ſubiect, are holden of ſome Lord or other, & that every Tenant muſt do ſome kind of ſervice. And that all lands and tenements are holden either mediately or immediatly of the King, for originally all lands and tenements were derived from the Crown. And it is to be obſerved that when the law createth any new tenure, it is the loweſt, (viz. Tenure in ſocage) and with the leaſt ſervice that can be done, and nareſt to the freedome of the former ſervice, as in this caſe a Tenure in ſocage by Fealty only, is created by the law, which is the loweſt and leaſt ſervice the law can create, becauſe Fealty is incident to every tenure except Tenure in Frankalmoigne; for if it ſhould create any other ſervice, it muſt create Fealty alſo. And the law according to Equity and Juſtice, giveth this Fealty to the Lord, of whom the land was before holden in Frankalmoigne. And laſtly, the law ſo abhorreth an inconvenience, as that it createth out of the land a new ſervice for avoyding thereof. It appeareth by our books, that a Seignior in Frankalmoigne may be granted over, and conſequently the Tenant ſhall hold of the Grantee by Fealty only, and therefore Britton ſaid well, that no ſervice could be demanded of a Tenant in Frankalmoigne; tant come les terres remaine en les mains les feoffees.

31.E.3.Ceſſant 22. 22.H.6.67.21.E.4.11. lib.9.fol.123. Anth.Lowes caſe.

Lib.9.fol.123 in Anth. Lowes caſe.

42.Aſſ.Pl.6. Britton 164.b.

Sect. 140.

ITem ſi home graunta a cel ſour a un Abbe, ou a un Prior terres ou tenements en frankalmoigne, ceux poſt (frankalmoigne) ſont

ALſo if a man grant at this day to an Abbot or to a Prior, lands or tenements in Frankalmoigne, theſe words (frankalmoign) are voyd, for it is or-

¶ *Ordeine per leſtatute.* Here it appeareth by the authority of Littleton that this is a ſtatute, and yet the King alone ſpeaketh, viz. Dominus Rex in Parliamento ſuo, &c. ad inſtantiam magnatum regni ſui conceſſit, providit & ſtatuit.

But because it is Dominus Rex in Parliamento, &c. conceſſit, it is as much in this caſe (being an ancient ſtatute) as Dominus Rex authoritate Parliamenti conceſſit. Secondly, Acts (amongſt other Acts of Parliament) entred into the Parliament Roll, and therefore ſhall be intended to be ordained by the King, by the conſent of the Lords and Commons in that Parliament aſſembled. Thirdly, it is a general law, whereof the Judges may take knowledge, and therefore it is to be determined by them, whether it be a ſtatute or no. Now for the divers forms of Acts of Parliament, you may read them in the Princes caſe, ubi ſupra.

Vid. l. 8. the Princes caſe.

¶ *Appel Quia emptores terrarum.* This ſtatute is called ſo, becauſe the ſtatute beginneth with theſe words, Quia emptores terrarum.

¶ *Nul poet aliener, &c. terres in fee ſimple de tener de luy meſme.*

This is fully inferred upon the ſtatute, but the letter of the ſtatute is, that Feoffatus teneat terram illam de capitali Domino, &c. So as by the authority of Littleton, he that citeth a ſtatute, is not bound to recite the very words thereof, ſo long as he miſſeth not of the ſubſtance and neceſſary conſequence thereupon, and yet the ſafer way is, to vouch the words of a law as they be.

¶ *Granta per licence meſme les tenements, &c.* Here Littleton ſpeaketh of a licence, or a diſpenſation within the ſaid ſtatute of Quia emptores terrarum (and mentioneth no other ſtatute) which may be done by the King and all the Lords immediate & mediate, for it is a Rule in law, Alienatio, licet prohibeatur, conſenſu tamen omnium, in

13. E. 3. tit. releaſe 33. 37. H. 8. F. N. B. 211. I.

boides, pur ceo que il eſt ordeiner per leſtatute que eſt appelle; Quia emptores terrarum (que leſtatut fuit fait, Anno 18. Ed. 1.) que nul poit aliener ne graunter terres ou tenements en fee ſimple, a tener de luy meſme. Iſſint ſi hõe ſeiſie de certaine tenements queux il tiēt de ſon Seignior per ſervice de chivaler, & a cel jour il &c. granta per licence meſmes les tenements a un Abbe, &c. en Frankealmoigne, Labbe tiendra immediatment meſmes les tenemēts per ſervice de chivaler de meſme le ſeignior, de q̄ ſon grantor tenoit, & ne tiendra my de ſon grant en frankalmoigne, p̄ cauſe de meſme leſtatut, iſſint que nul poit tener en frankalmoigne, ſi non q̄ ſoit per title de preſcription, ou per force de graunt fait a aſcun de ſes predeceſſors, devant q̄ meſme le ſtatute fuit fait. Mes le roy poit doner terres ou tenements en fee ſimple, a tener en Frankalmoigne, ou per auters ſervices, car il eſt hors de cas del eſtatute.

dained by the ſtatute which is called, *Quia emptores terrarum*, (which was made *Anno* 18. E. 1.) that none may alien nor grant Lands or Tenements in Fee ſimple to hold of himſelf. So that if a man ſeiſed of certain tenements which he holdeth of his Lord by Knights Service, and at this day he &c. granteth by licence the ſame Tenements to an Abbot, &c. in Frankalmoign, the Abbot ſhall hold immediately the Tenements by Knights Service of the ſame Lord of whom his Grantor held, and ſhall not hold of his Grantor in Frankalmoigne, by reaſon of the ſame Statute. So that none can hold in Frankalmoigne, unleſs it be by title of preſcription, or by force of a Grant made to any of his Predeceſſours before the ſame Statute was made: but the King may give Lands or Tenements in Fee ſimple to hold in frankalmoigne, or by other ſervices, for he is out of the caſe of that Statute.

quorum

quorum favorem prohibita eſt, poteſt fieri, and quilibet poteſt renunciare juri pro ſe introducto, and the licence of Lords immediate, and mediate in this caſe ſhall enure to two intents, viz. to a diſpenſation both of the ſtatute of Quia emptores terrarum, and of the ſtatutes of Mortmain, as Littleton here implieth, becauſe their deeds ſhall be taken moſt ſtrongly againſt themſelves. But it is a ſafe and good policy in the Kings licence to have a non obſtante alſo of the ſtatutes of Mortmain, and not only a non obſtante of the ſtatute of Quia emptores terrarum. But it appeareth by Littleton (which is a ſecret of law,) that there needeth not any non obſtante by the King of the ſtatutes of Mortmain, for the King ſhall not be intended to be miſconuſant of the law, and when he licenſeth expreſsly to alien to an Abbot, &c. which is in Mortmain, he needs not make any non obſtante of the ſtatute of Mortmain, for it is apparent to be granted in Mortmain, and the King is the head of the Law, and therefore Præſumitur Rex habere omnia jura in ſcrinio pectoris ſui, For the maintenance of his Grant to be good according to the Law, for which cauſe of purpoſe Littleton maketh no mention of any licence in Mortmain. Diſpenſatio, eſt mali prohibiti provida relaxatio, utilitate ſeu neceſſitate penſata.

43.Aſſ.Pl.19.9.E.4.b.11. Pl.Com.502.503. Grendons caſe. Vid.l.10.25.26.31.& 110 Vid.Sect.786.

¶ *Labbe tiendra, &c. per ſervice de chivaler.* For although by the death of the Abbot there is neither Ward, Marriage, nor relief due, yet he holdeth by Knights ſervice, albeit the Lord cannot have the fruit of it, and if the Abbot with the conſent of the Convent alien the land over to a man and his heirs, there is the Ward, Marriage, and Relief revived. But by preſcription (as it hath been ſaid) the ſucceſſor of an Abbot may pay reliefe. An Abbot or Prior, &c. that holdeth lands by Knights ſervice, albeit he ought not in reſpect of his profeſſion, to ſerve in war in proper perſon, yet muſt he find a ſufficient man, conveniently arrayed, for the war, to ſupply his place. And if he can find none, then muſt he pay Eſcuage, &c. for his profeſſion doth not priviledge him, but that the Kings ſervice in his war muſt be done, that belongeth to his tenure.

Little.fol.20.a. 8.R.2.relief 14.3.H.4.2.a Vide Little.fol.20.

Nota (Reader) ſince Littleton wrote, a man might either in his life time, or by his laſt will in writing, (m) give Lands, Tenements, &c. to any ſpiritual body Politick, or Corporate, to be holden of himſelf in Frankalmoigne, or by Divine Service, as by the ſtatute of 1. & 2. Phil. & Mariæ (which indured for twenty years) appeareth, which ſtatute, ſince that time, hath been favourably and benignly expounded.

(m)1 & 2.Ph.& Mar.c.8 Mich.8.& 9.Eliz Dyer. fol.255.

¶ *Iſſint que nul poet tener en Frankalmoigne, ſi non que ſoit per title de preſcription, &c.* It is to be underſtood, that a man ſeiſed of lands may at this day give the ſame to a Biſhop, Parſon, &c. and their ſucceſſors in Frankalmoigne, by the conſent of the King, and the Lords mediate and immediate, of whom the land is holden, for the Rule is Quilibet poteſt renunciare juri pro ſe introducto.

12.E.4.4. 27.H.8.2.E.2.avowry 185.

So if an Eccleſiaſtica Perſon hold lands by fealty and certain Rent, the Lord at this day may confirm (n) his eſtate, to hold to him and to his ſucceſſors in Frankalmoigne, for the former Services be extinct, and nothing is reſerved but that he holds of him, and ſo he did before.

(n)4.E.3.21.22.E.3.15. 38.H.6.25.Littl.cap.confirmat.123.

¶ *Mes le roy poet, &c. car il eſt hors de caſe del ſtatute.*

It is clear that the King is out of the caſe of the ſtatute, for the ſtatute is Quod feoffatus teneat terram illam, &c. de capitali Domino feodi, &c. and this cannot be intended of the King, who is ſuperior to all, and inferior to none, but where the King is bound by Acts of Parliament, and where not, Vide lib. 11. fol. 66. Magdalen Colledge Caſe.

Lib.11.fol.66. Magda en Colledge caſe.

Sect. 141.

ET nota q̃ nul poit tener terres ou tenements en Frankalmoigne, forſpriſe del grantor, ou de ſes heires. Et pur ceo il eſt dit, que ſi ſoit Seignior, meſne & tenant, & le tenant eſtun Abbe que tient

AND note that none may hold lands or tenements in Frankalmoigne, but of the Grauntor, or of his heirs. And therefore it is ſaid, that if there be Lord, Meſne, and tenant, and the tenant is an Abbot which

¶ *Forſpriſe del grantor ou de ſes heirs.*

The Tenure in Frankalmoigne is an incident to the inheritable blood of the grantor, & cannot be transferred nor forfeited to any other, no more than a foundership of a houſe of Religion, which is intended to be in Frankalmoigne, or homage anceſtrel, or the writ of Contra formam Feoffamenti, or the writ of Contra

14.E.3.tit.Meſne 7. 14.H.3.tit.diſclaimb.33. 15.E.3.confirm.8. 27.H.8.b.Temps E.1. garr.90.45.E.3.23. 47.H.3.garr.99. 11.H.4.52.14.H.4.5. 10.H.7.11. 28.Aſſ.32.18.E.2.18. 22.E.3.18.Corody. Broke 5. 22.H.6.50. 4.E.2. avowry 201.202. 19.E.3.ibid.122. 11.E.3.ib.100.30.H.6.7. 33.H.8.Dyer 51. F.N.B.16.F.N.B.211.c.

Contra formam collationis, or any other incident to their inheritable blood. But it is no incident inseparable, for the Lord may release to the Tenant in Frankalmoign, and then the tenure is extinct, and he shall hold of the Lord Paramount by fealty, as in the case of Littleton sect. 193.

15.E.3.confirm.8.

¶ *Ou de ses heires.* Here (or) hath the force of (and) for a man cannot at this day grant lands in tayle and reserve a Rent to his heirs, and exclude the grantor himself, for the heir cannot take any thing in the life of the Ancestor, neither can the heir take any thing by descent, when the ancestor himself is secluded. But if a man had granted lands at the Common law to hold of his heirs, those words (to hold of his heirs) are void, and he shall hold of the grantor as he held over, which he should have done, if he had made no reservation at all.

Vide 15.E.4.

32.E.3. tit. Annuity 52. 3.All.Pl.3.&c.

And albeit Littleton saith that no man can hold lands in Frankalmoign, but of the grantor or his heirs, yet might an Abbot by assent of his Covent, or a Bishop with assent of his Chapter, and such like, by license as is aforesaid, have given lands in Frankalmoign, to hold of them and their successors, and as Littleton himself agreeth, the King may give lands in Frankalmoign, In which case the land shall be holden of him, his heirs and successors.

¶ *Et pur ceo est dit si soit Seignior, mesne & tenant, & le tenant est un Abbe, &c.* By this it appeareth that if the Seignory be transferred by act in law a stranger, and thereby the privity is altered, that the tenure in Frankalmoign is changed to tenure in Socage by fealty, as well as it appeareth before when the Seignory or Tenancy is granted to another, and the Law in this case also createth a new fealty, wherewith the land was not charged before.

¶ *Donques le mesnaltie deviendra per escheat al dit Seignior Paramont.*

This new tenure created by Law, shall upon the Escheat drown the Seignory, for always the Seignory nearer to the land drowns the Seignory, that is more remote off, and yet the Lord in this case to whom the Mesnalty is escheated, shall hold by the same services that held him the Escheat.

2.E.4.46.

7.E.4.12.a.

Sect. 142.

¶ *Home de Religion.* And yet this case extendeth to all Ecclesiastical persons that hold in Frankalmoigne, be they secular or regular, for the mesne ought to acquite all of them, for they be bound (a) to make prayers for their founder and his heirs, and in consideration of those prayers, the founder, &c. is bound to pay to the chief Lord all rents and services issuing out of that land, as it appeareth by that which followeth

(a) Pl.Com.306.b.in Shoringtons case 32.H.6.6. 39 H.6.29. 24.H.3.mesne 7.

¶ *De luy acquiter.*

¶ Et nota q̄ lou Ettiel hõr de religion tient leg̃ Tenements de son Sñr en frankalmoign, son Sñr est tenus p̄ la ley de luy acquiter de chescun mãner ꝺ ſervice, que alcun Sñr paramont de luy voet aver ou demander de meſmes leg̃ tenements, & ſil ne

And note that where such man of religion holds his tenements of his Lord in frankalmoigne, his Lord is bound by the law to acquite him of every manner of service which any Lord paramont will have or demãd of him for the same tenements, and if he doth not acquite

holdeth of his Mesne in Frankalmoigne, if the Mesne die without heir, the Mesnaltie shall come by Escheat, to the said Lord Paramont, and the Abbot shall then hold immediatly of him by fealty only, & shall do to him fealty, because he cannot hold of him in frankalmoign, &c.

luy

luy aquita pas, mes ſuffra luy deſtre diſtraine, &c. donq̃ il avera envers ſon ſeignior un briefe de Meine, & recovera envers luy ſes dammages & ſes costes de ſon ſuit, &c.

him, but ſuffereth him to be diſtreined, &c. he ſhall have againſt his Lord a writ of Meſne, and ſhall recover againſt him his dammages and coſts of ſuit, &c.

Acquiter is compounded of ad, and the old verb quietare, and ſignifieth in Law (b) to diſcharge, or keep in quiet, and to ſee that the tenant be ſafely kept from any entries, or other moleſtation for any manner of ſervice iſſuing out of the land to any Lord, that is above the Meſne. (c) And hereof cometh (d) acquital, and quietus eſt, (that is) that he is diſcharged; and he that is diſcharged of a felony, &c. by judgment, is ſaid to be acquitted of the felony, acquietatus de felonia; and if he be drawn in queſtion again, he may plead (e) auterfoits aquite: And therefore if ſuch a tenant, as Littleton here ſpeaketh of, be diſtrained by any Lord paramont, the Meſne (to keep the Tenant quiet) may put his beaſts in the pownd, in ſtead of the beaſts of the Tenant.

(b) Fleta lib. 2. ca. 43. Britton fol. 58. 59. Vide hereafter in this Sect. in briefe de Meſne.

(c) Vide Sect. 142. 540.
(d) 8. E. 2. corone 424. 20. E. 2. Ibid. 232. Stanf. Pl. corone 105.
(e) 4. E. 2. 25. 17. E. 3. 44. 7. H. 4. 18. 24. H. 6. 47. 13. E. 4. 6. F.N.B. 136. Lib. 9. fo. 110. 111. in Treſhams caſe.

There be three kinds of Acquitals. 1. An acquital by Deed. 2. An acquital by Preſcription. 3. An acquital by Tenure: and by Tenure four manner of waies. 1. By oweltie of ſervices, for ſervice acquites ſervice. 2. Tenure in Frankalmoign, whereof Littleton here ſpeaketh. 3. Tenure in Frankmartage. 4. Tenure by reaſon of Dower.

3. E. 3. 14. 77. 5. E. 3. 11. 4. H. 6. 28. 39. E. 3. 19. 11. H. 4. 52. 1. H. 4. 9. 14. H. 4. 17. F.N.B. 136. b. h. 39. H. 6. 30. 33. H. 6. 7. F.N.B. 135. m. 4. E. 4. 35. 12. H. 4. 9. 28. E. 3. 05. 17. E. 3. 39. (f) 39. H. 6. 31. a. 9. E. 4. 27. 17 E. 2. Meſne 5. E. 2. 49. *Bracton lib. 2. fol. 84. (g) 4. E. 3. 42.

¶ *De cheſcun manner de ſervice.* (f) And yet not of ſervices only, as Homage, Fealty, Rent works, and other ſervices, but alſo of improvement of ſervices, as if he be diſtreined for relief, Aide pur file marier, aide pur faire fitz chivaler, &c. Alſo for ſuite ſervice to a Hundred, (g) but for ſuite real in reſpect of reliance within any Hundred, Leet, or Turn, the Meſne ſhall make no acquital, for that is in reſpect of his perſon and reſiance.

¶ *Briefe de meſne.* Breve de medio, a writ of Meſne, ſo called by reaſon of the words of the writ of Meſne, which are, Unde idem A. qui medius eſt inter C. & præfatum B. A. who is Meſne between C. that is the Lord paramount, and B. that is the Tenant peravaile. And note, that there be ſix writs in law that may be maintained, quia timet, before any moleſtation, diſtreſs, or impleading: as 1. a man may have his writ of Meſne (whereof Littleton here ſpeaks) before he be diſtreyned. 2. A Warrantia cartæ, before he be impleaded. 3. A Monſtraverunt, before any diſtreſs or vexation. 4. An Audita querela, before any Execution ſued. 5. A Curia claudenda, before any default of incloſure. 6. A No injuſte vexes, before any Diſtreſs or moleſtation: and theſe be called Brevia anticipantia, Writs of prevention.

For this writ ſee the Regiſter fol. and F.N.B. fol. 135. Mirror cap. 2. Sect. 13. Bracton lib. 2. fol. 84. Britton fol. 58. Fleta li. 2 ca. 43. Weſtm. 2. cap. 9.

¶ *Et recovera vers luy ſes damages.* It is to be known that there be two ſeveral judgments in a writ of Meſne, one at the Common law, another by the ſtatute of W. 2. ca. 9. At the common Law he ſhall have judgment to recover his acquital, and if he be diſtreined or damnified, his damages and coſts: and the proceſs at the common Law was Summons, Attachment and Diſtreis infinite, in the ſame County where the writ is brought. * The judgment by the ſaid ſtatute of W. 2. is a forejudger of the Meſnalty, and that in two ſeveral caſes, one upon Proceſs given by the ſaid ſtatute, viz. Summons, Attachment and Grand diſtreis, and if he cometh not, and the writ be returned, he ſhall be forejudged: the other caſe is where the tenant recovereth his acquital in a writ of Meſne, if he be not acquited afterwards, he ſhall have a writ of Diſtringas ad acquietandum, againſt the ſame Meſne, and if he cometh not, he ſhall be forejudged by his default of the Meſnalty, and ſoif he cometh, and it be found againſt him by verdict, he ſhall be forejudged: but forejudger in that caſe is not given againſt his heir, for that the ſtatute ſpeaketh only of the Meſne, and not of his heirs. And the judgment, in caſe of forejudgment is, quod T. (le Meſne) amittat ſervitia de A. (le tenant) de tenementis prædictis, & quod omiſſo prædicto T. præſtat' R. (le ſeignior paramont) modo ſit attendens & reſpondens per eadem ſervitia per quæ T. tenuit. The ſaid Statute in caſe of forejudgment, doth not bind a feme covert, and yet if ſuch a judgment be given againſt a Baron and Feme, it is not void, but erroneous, and to be reverſed in a writ of error, and ſo a forejudgment againſt a Tenant in tatle ſhall bind the iſſue in tatle in an Avowry, until he reverſeth it by error. If two Joyntenants bring a writ of Meſne, and the one is ſummoned, and ſevered, the other cannot forejudge the Meſne for he ought to be attendant to the Lord paramount, as the Meſne was, and that cannot be he alone. And ſo it is if there be two Joyntenants Meſnes, and in a writ of Meſne brought againſt them, one maketh default, and the other appears, there can be no forejudger.

W. 2. ca. 9. Vide lib. 8. fol. 134. Mary Shepleys caſe.

*Bracton. lib. 2. fol. 84. Fleta lib. 2. cap. 43.

46. E. 3. 31. 18. E. 2. tit. Meſne. F.N.B. 136. 2. H. 4. 7. 17. E. 3. Contra formam collat. 1. F.N.B. 121.

7. E. 3. 41. tit. Meſne 18. 9. E. 2. ibid. 67. 14. E. 2. ibid. 70. Lib. 9. fol. 73. b. Doct. Huſſeys caſe.

If the Tenant be diſſeiſed, and the Diſſeiſor in a writ of Meſne forejudge the mean, this ſhall not bind the diſſeiſee. And ſo if the Meſne be diſſeiſed, and a forejudgment is had againſt the Diſſeiſor, this doth not bind the Diſſeiſee, for the words of the ſaid ſtatute are Quando tenens ſine præjudicio alterius quam medii attornare ſe poteſt capitali domino.

But if the daughter, the ſon being in venter ſa mere, be forejudged, it ſhall bind the ſon that is born afterwards, becauſe he had no right at the time of the forejudgment. And ſo if the tenant enter in Religion, and his heir forejudgeth the Meſne, and then the Anceſtor is deraigned, he ſhall be bound cauſa qua ſupra. If there be Lord, Prior, Meſne, and Tenant, the Meſne cannot be forejudged, becauſe he alone can do nothing to the præjudice or the diſherſon of his Church: and the like law is of a Biſhop, Parſon, or the like.

16.E.3.Judgm.117.

No forejudgment can be but where there is but one mean between the Lord diſtreyning, and the Tenant, becauſe the Tenant upon the forejudgment cannot be attendant to the Lord diſtreyning, in reſpect there is a mean between them, and ſo the ſaid ſtatute provideth for in expreſs terms.

W.2.ca.9.

Nota, the Plaintiff in a writ of Meſne, may chuſe either Proceſs at the common Law, or upon the ſaid ſtatute of W.2. Fore-judgment is called Foris judicatio, and he that is forejudged Foris judicatus. And Bracton hath this writ, Rex Vicecomiti, &c. & non permittas quod A. capitalis Dominus feodi illius habeat cuſtodiam hæredis quia in Curia noſtra foris judicatur de cuſtodia, &c. Fleta calleth it Abjudicationem, and thereupon, cometh abjudicatus ſor he ſaith, Poſt Proclamationem, &c. factam, abjudicetur medius de feodo, & ſervitio ſuo.

40.E.3.23.F.N.B.157. Bract.l.2.c.56.b.Brit. f.58.b. Flet.li.2.ca.43.

Chap. 7. Homage Auncestrel. Sect.143.

Per title de Preſcripton en le Tenancy, en le ſanke le tenant, & auxy en le Seignior en le ſanke le Seignior. Here Littleton doth not define what Homage Auncestrel is, but putteth an example in one caſe. For in the 147. Section, it appeareth that blood is not alwaies neceſſary on the Lords ſide. In this example here put, there muſt be a double preſcription, both in the blood of the Lord, & of the Tenant, and therefore I think there is little or no land at all at this day holden by Homage auncestrel.

9.H.3.Vouch.277. 47.H.3.Garr.99.Temps E.1.Garr.90.4.E.2. Vouch.245.45.E.3.43. 11.H.4.50.4.H.6.26.

And here it is ſaid, Autant eſt le Seignior tenus a ſon homage, come le homage a ſon Seignior, forſque ſolement en reverence. And herewith agreeth Bracton, Eſt tanta & talis connexio per homagium inter Dominum & tenentem, quod tantum debet Dominus tenenti, quantum tenens Domino, præter ſolam reverentiam.

Brit.fol.170.a.

Bract.fol.78. Glanvil.li.9.ca.4.5.6.

Treit a luy garranty.

Tenure per Homage auncestrel eſt, lou un Tenant tient ſa Terre de ſon Seignior per homage, & meſme le Tenant & ſes Auncestors que heire il eſt ont tenus meſme le Terre del dit Seignior, & de ſes Auncestors que heire le Seignior eſt, de temps dont memorie ne court per homage, & ont fait a eux homage. Et ceo eſt appel Homage auncestrel, per cauſe de continuance que ad eſte per title de Preſcription en le Tenancy, en le ſanke le Tenaunt, & auxy en le Seignio-

Tenant by homage Auncestrel is, where a tenant holdeth his land of his lord by homage and the ſame Tenant and his Auncestors whoſe heir he is, have holden the ſame land of the ſame lord, and of his Auncestors whoſe heir the Lord is, time out of memory of man, by Homage, and have done to them Homage. And this is called Homage Auncestrel, by reaſon of the continuance which hath been by title of Preſcription in the Tenancie in the bloud of the Tenant, and alſo in the Seigniory in

rie

rie en le sanke le seignior. Et tiel Service de Homage Ancestrel trait a luy garrantie, cestasçavoir, que le Seignior que est en vie ſ ad receive le homage de tiel Tenant, doit garranter son Tenant quant il est implede de la terre tenus de luy per Homage Ancestrel.

the blood of the lord. And such service of Homage Ancestrel draweth to it warranty, that is to say, that the Lord which is living, and hath received the Homage of such Tenant, ought to warrant his Tenant when he is impleaded of the Land holden of him by Homage Ancestrel.

Hereby appeareth what a reverend respect the Law hath to ancient Inheritances continued in the blood of the Lord and of the Tenant; for in this example put, if the continuance hath not been in the blood of both sides, no warranty belongeth to Homage Ancestrel, but if ancient continuance hath been on both sides, (m) then such Homage Ancestrel draweth to it warranty, as ancient continued Inheritance on both parties hath more pleadge and account in Law, than Inheritance lately or within memory acquired.

Vide Britton ubi supra. 14. H. 6. 25. 18. H. 6. 2. b. Glanvil lib. 9. c. 4. 5. & 6. 9 H. 3. Voucher 277. 47. H. 3. Voucher 270, 271. 43. E. 3. 3. a.

(m) See the second part of the Institutes upon the 6. chapter of the Statute of Bigamie.

If the Lord grant the services of his Tenant by Homage Ancestrel, the Tenant shall not be compelled in a per quæ servitia to attorn, unless the Conusee will grant in Court to warrant the Land unto him. 18. H. 6. 2 b. per Newton

If the Tenant vouch by force of this warranty in Law, it is a good counterplea, that the Tenant (or any one of his Ancestors) recessit de servitio suo & fecit servitium suum. A. B. sine aliqua coactione : e sua propria voluntate. 9. H. 3. Voucher 277.

¶ *Et ad receive homage de tiel tenant.* (a) So as before homage received, the Tenant could not absolutely bind the Lord to warranty, and therefore of ancient time there lay (b) a Writ De homagio capiendo, for the Tenant against the Lord to compel him to receive his homage for the benefit of his Warranty. Which Writ you shall read in Bracton, and (c) Britton, and the Process, and the manner of trial thereupon, and the same you shall find in 47. H. 3.

(a) 9. H. 3. Voucher 277. Temps E. 1. Gar. 90. 45. E. 3. 23.
(b) Glanvil. lib. 9. c. 4, 5. & lib. 1. cap. 3. Bracton lib. 2. fol. 83.
(c) Britton fol. 172, 173. 47. H. 3. garrantie 99.

Sect. 144.

¶ Et auxy tiel service per homage auncestrel trait a luy acquital ſ. que le Sir doit acquiter le tenant envers touts auters Sirs paramont luy de chescun manner de service.

AND also such service by homage ancestrel draweth to it acquital, s. that the Lord ought to acquite the Tenant against all other Lords paramont him of every manner of service.

¶ *Trait a luy acquital.* Of acquital somewhat hath been said in the Chapter of Frankalmoigne. Sect. 142. & 540.

Sect. 145.

¶ Et il est dit, q̃ ſi tiel tenant soit empleď p̃ un Præcipe quod reddat, &c. ſ il vouche a garrantie son seignior, q̃ vient eins p̃ proces, ſ demanda del tenant que il ad de luy lier a

AND it is said that if such Tenant be imp'eaded by a *Præcipe quod reddat, &c.* and vouch to warranty, his Lord who cometh in by process and demands of the Tenant, what he hath to bind

¶ *UN Præcipe qd. reddat.* This is understood of the Kings Writ directed to the Sheriff of the County, where the land lieth, whereby the Sheriff is authorized to command the Tenant of the Land to yield the same to the Demandant; and of these words of the Writ (Præcipe quod reddat) the Writ is so called. Writs

of Præcipe be of four kinds, Præcipe quod reddat, Præcipe quod faciat, Præcipe quod permittat, & Præcipe quod non permittat, &c, as appeareth by the Regiſter.

Regiſt. 139.

¶ *Et il vouche a garrantie*, Avoucher, (in Latin vocatio, or advocatio is a word of Art, made of the Verb Voco, and is in (d) the underſtanding of the Common Law, when the Tenant calleth another into the Court that is bound to him to Warranty, that is, either to defend the right againſt the Demandant, or to yield him other Land, &c. in value, and extendeth to Lands or Tenements of an eſtate of Freehold, or Inheritance, and not to any Chattel real, perſonal, or mixt, ſaving only in caſe of a Wardſhip granted with warranty (as ſhall be ſaid more at large in the Chapter of Warranties) for in the other caſes concerning chattels the party, if he hath a Warranty, ſhall not vouch, but habe his action of covenant, if he hath a Deed, or if it be by Parol, then an action upon his caſe, or an action of Deceipt, as the caſe ſhall require. Now ſeeing that no Latin, French, or Engliſh word can habe this particular ſignification, therefore the common Lawyer (that I may ſpeak once for all) is driben, as the profeſſors of other liberal ſciences uſe to do, to uſe ſignificant words framed by Art which are called vocabula artis, though they be not proper to any language. He that voucheth is called the Voucher vocans, and he that is vouched is called Vouchee Warrantus. (e) The Proceſs whereby the Vouchee is called, is a ſummoneas ad Warrantizandum, whereupon if the Sheriffe returneth that the Vouchee is ſummoned, and he make default, then a (f) Magnum cape ad valentiam is awarded, when if he make default again then judgment is given againſt the Tenant, and he ouer to habe in value againſt the Vouchee. If the Vouchee do appear and after make default, then Parvum cape ad valentiam is awarded, and if he make default again, then judgment as before. But if the Sheriffe return that the Vouchee hath nothing, then after Writs of Alias and pluries, a Writ of ſequatur ſub ſuo periculo ſhall be awarded, and if the like return be made, then ſhall the Demandant habe judgment againſt the Tenant, but he ſhall not habe judgment to recober in value, becauſe the Vouchee was neber warned. And it appeareth that he hath nothing: but in the grand cape ad valentiam it appeareth, that he hath aſſets, & his making default after ſummons is an implied confeſſion of the Warranty. And it is called a ſequatur ſub ſuo periculo, becauſe the Tenant ſhall loſe the Land

(d) Mir. ca. 5. ſect 1. & 5. Bract. li. 5. fol. 380, 381. Brit. c. 75. de Gar. vouch. Fleta l. 6. c. 23, 24, 25, 26. &c. optime Lamb. expli. Verb. Advocare.

(e) V. Reg. Jud. for all theſe judicial Writs.
(f) V. Vet. N. B. 179, 186. 39. E. 3. 28. 14. H. 6. 7. 17. E. 3. 41. 3. H. 4. 4. 11. H. 4. 72. 45. E. 3. 19. F. N. B. 134, 135.

garranty, & il mre coment il & ſes auncеſters q̄ heire il eſt, ount tenus ſa terre del vouchee & de ſes auncеſters, de temps dont memozie ne curt. Et ſi l' ſeignioz que eſt vouche ne aboit reſceive pas homage del tenant ne daſcun de ſes auncеſters, le ſeignioz (ſil voit) poit diſclaimer en le ſeigniozie, & iſſint ouſte le tenant de ſon garrantie. Mes ſi le Shir q̄ eſt vouch ad receive homage de le Tenant, ou de aſcun de ſes auncеſters, donques il ne diſclaimera, mes il eſt oblige p̄ la ley de garranter le tenant, & donq̄ ſi le tenant perd̄ ſa tre en default del vouchee il recobera en value envers le vouchee de terres & tenements que le vouchee avoit al temps de le voucher, ou unques puis.

him to warranty, and he ſheweth how he and his Anceſtors whoſe heir he is, have holden their Land of the Vouchee and of his Anceſtors time out of mind of man. And if the Lord which is vouched hath not received homage of the Tenant, nor of any of his Anceſtors, the Lord (if he will) may diſclaim in the Seigniory, and ſo ouſte the Tenant of his warranty: but if the Lord who is vouched hath received homage of the Tenant, or of any of his Anceſtors, then he ſhall not diſclaim, but he is bound by the Law to warrant the Tenant; and then if the Tenant loſeth Land in default of the Vouchee, he ſhall recover in value againſt the Vouchee of the the Lands and Tenements which the Vouchee had at the time of the Voucher, or any time after.

land without any recompence in value, unless he upon that Writ can bring in the voucher to warrant the land unto him: and if at the Sequatur sub suo periculo, the Tenant and the Voucher make default, and the Demandant hath judgment against the Tenant, and after brings a Scire fac. to have execution, the Tenant may have a Warrantia cartæ, and if he were impleaded by a stranger, he may vouch again. but if he had judgment to recover in value, he shall rather have a Warrantia cartæ, or vouch again, for by this judgment to recover in value, he hath benefit of the Warranty. And you shall find in Books a recovery with a single Voucher, and that is when there is but one Voucher; and with a double Voucher, and that is when the Voucher voucheth over; and so a treble Voucher, &c. Again, you shall find there also a foxein Voucher, and that is when the Tenant being impleaded within a particular jurisdiction (as in London or the like) voucheth one to warranty, and prays that he may be summoned in some other County out of the jurisdiction of that Court: this is called a foxein Voucher, but might more aptly be called a Voucher of a foxeiner de forinsecis vocatis ad Warrantizandum Note that by the Civil Law every man is bound to warrant the thing that he selleth or conveyeth, albeit there be no express Warranty; but the Common Law bindeth him not, unless there be a warranty either in Deed or in Law; for Caveat emptor, as shall be said more at large in the Chapter of Warranties in the third Book. Glouc. ca. 12. F.N.B. 6. c.

¶ *De Seignior (sil voet) poet disclaimer (u) en le Seigniorie. Disclaimer, disclamare*, is compounded of de and clamo, and signifieth utterly to renounce the Seigniory. Brit. 174.

(a) Note there be divers kinds of Disclaimer, that is to say, a Disclaimer in the tenantry; a Disclaimer in the blood, and a Disclaimer in the Seigniory; whereof Littleton here putteth this case. (a) 47. H. 3. Disclaim. 35. 16. H. 7. 1. 20. E. 2. tit. Nuper ob. 14. F. N. B. 197. & 151. b. 45. E. 3. 19. 21. H. 3. 50. E. 3. 23. &c.

(b) But if the tenant in Frankalmoigne being a Writ of Meine against his Lord, the Lord cannot disclaim in the Seigniory, because he cannot hold of any man in Frankalmoigne, but of his Lord and his Heirs; and so note a diversity between a Tenure in Frankalmoigne, whereby Divine Service is maintained, and Homage Auncestrel which respecteth temporal Service. But if the Lord will not disclaim in the Seigniory in the case of Homage Auncestrel, then albeit he hath not received Homage, he shall warrant the Land. (b) 14 H. 3. tit. Disclaim b. 33.

¶ *Si le Seignior que est vouche ad receive homage, &c. il ne disclaimera.* Therefore it is good for the Tenant, to the intent to oust the Lord of his Disclaimer, in his Voucher to allege, that the Lord hath taken Homage of him and if he allege it not, and the Lord offer to disclaim, the Tenant may counterplead the same by acceptance of Homage, and the reason that the Lord cannot disclaim in that case is, for that he hath accepted his humble and reverent acknowledgment to become his man of life and member, and terrene honour, and to be faithful and loyal to him for the Tenements which he holds of him, and against the acceptance hereof the Lord cannot disclaim. 47. H. 3. Disclaim. 35. V. Bract. l. 4 252. b. 16. H. 7. 1. Brit. 173, 174.

¶ *Que il avoit al temps del voucher.* Hereby it appeareth, that the Tenant shall not be driven to recover in value only those Lands which the Lord had from that Ancestor which created the Seigniory, for that were in manner impossible, for that the Seigniory must be created before time of memory; and the first creation of the Seigniory did not create the warranty, but the continuance of both sides time out of mind created the warranty. And that is the reason that a Writ of Annuity shall not (c) lie against the heir by prescription because it cannot be known, whether he hath any Land by descent from the said Ancestor, that first granted the Annuity. And here is a point worthy of observation, that in the case of Homage Ancestrel, (which is a special Warranty in Law, by the authority of Littleton, the Lands generally that the Lord hath at the time of the Voucher shall be liable to execution in value, whether he hath them by descent or purchase. But in the case of an express warranty the Heir shall be charged but only for such Lands as he hath by descent from the same Ancestor, which created the Warranty. (c) 46. E. 3. 5. b. 10. E. 4. 10. b. 19. H. 6. 74. 37. H. 6. 19. 5. H. 7. F. N. B. 152.

Note, what privilege this ancient Warranty (created by operation of Law) hath more than the express Warranty. And so you may observe, that in this case, firmior & potentior est operatio legis quam dispositio hominis. 23 E. 1. Vouch. 291. 9. Ed. 2. War. Car. 20. 19. Fines 127.

¶ *Al temps de voucher ou unques puis.* This is evident and worthy of diligent observation, viz. that the lands of the Voucher shall be liable to the Warranty, that the Voucher hath at the time of the Voucher; for that the Voucher is in lieu of an action, and in a Warrantia cartæ, the Land which the Defendant hath at the time of the Writ brought, shall be liable to the Warranty 29. E. 3. 3. 18. E. 3. 1, 2. H. 4. 10. 23. E. 3. Recon. in valu 3. 16. E. 3. Vouch. 35. 19. Edw. 3. Vouch. 24. 22. E. 3. Fitz. Nat. Bre. 134, f.

Upon a Judgment in Debt, the Plaintiff (d) shall not have execution, but only of that land which the Defendant had at the time of the Judgment, for that the action was brought in respect of the person, and not in respect of the Land. But if an Action of Debt be brought 2. H. 4 14. 42. E. 3. 1. 42. as. 17. 9. E. tit. Execut. 249.

against the heir, and he alieneth, hanging the Writ, yet shall the Land which he had at the time of the original Purchase be charged, for that the Action was brought against the heir in respect of the Land. (e) If a man be Nonsuit, the Land only which he had at the time of the ametriament assessed shall be charged, and not that which he had at the ending of the pledges. For the amerciament is not in respect of the land, but of his want of prosecution, which was a default in his person. But the issues of a Juror shall be levied upon the Feoffee, albeit they were not lost before the feoffment, because he was returned and sworn in respect of the land. Note the diversity.

(e) 22. Ass. pl. 32.

If a man give lands in fee with warranty, and bind certain lands specially to warranty, the person of the Feoffor is hereby bound, and not the Land, unless he hath it at the time of the Voucher.

32 E. 1. Voucher 292.

Sect. 146.

¶ *Son Seignorie est extinct, & le tenant tiendra de Seignior procheine paramount, &c.* Here two things are to be observed: First that by this disclaimer in the Seigniory, the Seigniory is (f) extinct in the Land.

¶ Et est accauoir, que en chescun cas ou le Seignior poit disclaimer è son seigniorie per la ley, & de ces voit disclaim en Court de Record, son seigniorie est extinct, & le tenant tiendra del Seignior procheine paramont le seignior que illint disclaime.

Vide Britton, fol. 58. 110.

(f) 45. E. 3. 7. 22 E. 4. 35.

And it is to be understood, that in every case where the Lord may disclaim in his Seigniorie by the Law, and of this he will disclaim in a Court of Record, his Seigniorie is extinct, and the Tenant shall hold of the Lord next Paramount, to the Lord which so disclaimeth. But if an Abbot or Prior be vouched by force of homage Auncestrel, &c. albeit that he never took homage, &c. yet he cannot disclaim in this case, nor in any other case; for they cannot take away or devest a thing in fee, which hath been vested in their house.

Secondly, That after the Disclaimer the Tenant shall hold of the next Lord Paramount, by the same services, as the meine so disclaiming held before.

¶ *Si un abbe ou prior soit vouch, &c. uncore, &c. uncore il ne pois disclaimer, &c.* Hereit appeareth of the Lords side, that continuance of blood is not necessary, but yet there must be privity of succession time out of mind in one politick body; for if that body be once dissolved, though a new be founded of the same name, and all the possessions be granted to them, yet the Homage Auncestrel is gone. But if a Prior and Convent be translated Concurrentibus his quæ in jure requiruntur to an Abbot and Convent, or to Dean and Chapter, there the Homage Auncestrel remains; for though the name be changed, yet the body was never dissolved, but in effect it remaineth still. If the body Politick were founded within time of memory, there cannot be Homage Auncestrel, for that continuance faileth, and though Auncestor is ever properly applied to a natural body, yet it is called Homage Auncestrel when the tenure is of a body Politick, for that it is Auncestrel of the Tenants side: but on the other side an Abbot or Prior cannot hold by Homage Auncestrel, for as appeareth by Littletons examples, it must ever be Auncestrel of the Tenants side. And where Littleton putteth his case of an Abbot or Prior, the same Law is of a Bishop, Dean, Archdeacon, Prebend, Parson, Vicar, and the like. Another thing here to be observed is, that an Abbot or Prior cannot disclaim, &c. for regularly it is true, Quod meliorem conditionem Ecclesiæ suæ facere potest Prælatus, deteriorem nequaquam: and again, Ecclesiæ suæ conditionem meliorem facere possunt

14 H. 6. 12. 2. H. 6. 9. 38. Ass. p. 22. 37. Ass. 6. Lib. 3. fol. 73. &c. Dean and Chapter de Norwich case.

poſſint ſine conſenſu, deteriorem non poſſunt ſine conſenſu. And therefore an Abbot, Prior, Biſhop, Dean, Archdeacon, Prebend, Parſon, Vicar, or any other ſole Corporation that is ſeiſed in auter droit cannot diſclaim, becauſe as Littleton ſaith, they alone cannot deſeat any fee which is veſted in their Houſe or Church. For the wiſdom of the Law would never truſt one ſole perſon with the diſpoſition of the Inheritance of his Houſe or Church. But an Abbot and Prior had their Covent, the Biſhop his Chapter, the Parſon and Vicar their Patron and Ordinary, and the like of other ſole Corporations, without whoſe aſſent they could paſs away no Inheritance. 40. E. 3. 27. 5 E. 4. 1. 6. E. 3. 51, 52. 10. E. 4. 2. 2. 21. H. 7. 20.

¶ *Ils ne poient aulenter ou deveſter choſe de fee, &c.* Theſe general words habe certain exceptions, for in a quo Warranto at the ſuit of the King againſt a Biſhop, Abbot, or Prior for Franchiſes and Liberties, if the Biſhop, Abbot, or Prior diſclaim in them, this ſhould bind their Succeſſors. If an Abbot or Prior had knowledged the Action in a Writ of Annuity, this ſhould have bound the Succeſſor, becauſe he cannot falſifie it in an higher Action: and there muſt be an end of Suits, Expedit Reipublicæ ut ſit finis litium. But if the Abbot levy a fine, or acknowledge the action in a Præcipe quod Reddat, the Succeſſor ſhall be bound pro tempore, but he may have a Writ of Right, and recover the Land. 6. E. 3. 51, 52. 38. E. 3. 33. 16. E. 3. tit. Abbot. 13. 19. E. 3. tit. Abbot. 18. 7. R. 2. Abbot. 7. 12. H. 4. 11. 20. H. 6. fo. ultimo. 4. H. 7. 2. 2. H. 4. 6. 34. Aſſ. p. 7. 14. E. 4. tit. Abbot. 8.

¶ *Per force de Homage Auncestrel, &c.* Here (&c.) implieth or by any other Warrante (i) as by the reaſon which our Author here yieldeth, appeareth. 8. E. 3. 28. 12. H. 8. 7. (i) 12. H. 8. 7.

¶ *Choſe de fee.* (k) For if in an Action of Debt upon an Obligation againſt an Abbot, the Abbot acknowledgeth the Action, and dieth, the Succeſſor ſhall not avoid Execution, though the Obligation was made without the aſſent of the Covent, for he cannot falſifie the recovery in an higher Action: Et res judicata pro veritate accipitur, and this is but a Chattel. And ſo it is of a Statute or Recognizance, acknowledged by an Abbot or Prior. (k) 7. R. 2. tit. Abbot. 7. See the Books next above.

Sect. 147.

¶ Item ſi home q̄ tient ſon terre p̄ homage auncestrel, alien a un auter en fee, le alienee terra Homage a ſon ſeignior, mes il ne tient de ſon Seignior per Homage Auncestrel, pur ceo q̄ le tenancie ne fuit continue en le ſanke de les auncestors lalienee, ne lalienee nauera ſanes garrantie de la terre de ſon ſire pur ceo que le continuance del tenancie en le tenant n'a ſon ſanke per lalienation eſt diſcontinue. Et ſic vide, que ſi le tenant que tient la terre per homage auncestrel de ſon Seig-

ALſo if a Man which holds his Land by Homage Auncestrel, alien to another in fee, the alienee ſhall do homage to his Lord; but he holdeth not of his Lord by homage auncestrel, becauſe the Tenancy was not continued in the blood of the Anceſtors of the alienee: neither ſhall the alienee have warranty of the Land of his Lord, becauſe the continuance of the Tenancy in the Tenant, and to his blood by the alienation is diſcontinued. And ſo ſee, that if the Tenant which holdeth his Land of his Lord

¶ *Alien a un auter en fee.* For hereby the priority of the eſtate is altered, and the continuance of it in the blood of the Tenant is diſſolved. But if the Tenant maketh a Leaſe for life, or a gift in tail, this is a continuance of the priority and eſtate in the Tenant in reſpect of the reverſion that remaineth in him: for the fee, whereof Littleton here ſpeaketh was not out of him. But if the Tenant maketh a feoffment in fee upon condition, and dieth, his heir performeth the condition, and reentreth, the homage auncestrel is deſtroyed in reſpect of the interruption of the continuance of the priority and eſtate, and this caſe was put & not denied in the argument (m) of the Caſe between the Lord Cromwel and Andrews, Mich. 14. and 15. Eliz. which I my ſelf heard and obſerved. As if Ceſty & uſe had made a feoffment in fee upon condition, and entred for the condition broken, he ſhould have detained the Land againſt (m) 14. Mich. 14. & 15. Eliz. 5 H. 7.

gainſt the Feoffees for ever, for that the eſtate and pꝛibity was for the time taken out of the Feoffees, and thereby diſſolved for ever. But if the Land were recobered againſt the Tenant upon a faint title, and the Tenant recober the ſame again in an action of higher nature, there the Homage Auncestrel remains, for the right was a ſufficient mean for the continuance: ſo it is if he had reberied it in a Writ of Erroꝛ. (n) If the alienee be impleaded in Littletons caſe, and bouche the alienoꝛ that held by Homage Auncestrel, albeit he cometh in by fiction of Law to many purpoſes in pꝛibity of his foꝛmer eſtate: Yet to this purpoſe he cannot come in as Tenant by Homage Auncestrel, becauſe of the diſcontinuance of the eſtate and pꝛibity, and as Littleton ſaith, the Tenancy was not continued in the blood. (o) And Britton ſaith, Et come aſcun nequedent ſoit Vouche per Homage, & le Seigniour tende de auerrer que le tenement dount il vouche fuit translate hors del ſanke deb primer purchaſer per feoffment ou per aſcun auter translation: en tiel caſe ſoit le tenant charger de voucher ſon ſeoffor ou ſes heirs.

nioꝛ, alien in fee, coment que il repꝛiſt eſtate de lalienee arrere en fee, il tient la terre p homage, mes nemy per Homage auncestrel.

by homage auncestrel alieneth in fee, though he taketh an eſtate again of the alienee in fee, yet he holds the land by homage, but not by homage ancestrel.

(n) 5. E. 3. 11. per Cantrel.

(o) Britton, fol. 170. 2.

¶ *Coment que il repꝛiſt eſtate del alienee en fee, &c.* Foꝛ the cauſe aforeſaid in reſpect of the interruption of the pꝛibity and continuance of the eſtate. And herewith agree our Books in Caſes of Warranties in Deed, oꝛ Warranties in Law. See more of this in the Chapter of Warranties.

38. E. 3. 20. 11. H 4. 22. 17. E. 3. 47. 59. 73, 74. 26. E. 3. 56. 18. E. 3. 56. 16. E. 3. Voucher. 89. 28. E. 3. 30. 44. E 5. Britt. fol. 169.

Sect. 148.

¶ *NE ferra homage al fitz:* If A. holdeth of B. as of the Manoꝛ of Dale, whereof B. is ſeiſed in tail. B. diſcontinueth the eſtate tail, and taketh back an eſtate in fee ſimple. A. doth homage to B. B dieth ſeiſed, the iſſue in tail entreth, A. ſhall do homage again to the heiꝛ in tail of B. becauſe he is remitted to the eſtate tail, and the ſtate in fee that his father had; in reſpect whereof the homage is done is baniſhed, and the heiꝛ in tail is in of a new eſtate, in reſpect whereof he ought to do a new homage. (p) But regularly it is true

¶ Item il eſt dit, que ſi home tient ſa terre d̃ ſon Seignioꝛ per homage & fealty, & il ad fait homage & fealty a ſon Seignioꝛ, & le Seignioꝛ ad iſſue fitz, & deux, & le Seignioꝛy diſcendiſt a le fitz, en ceo cas ie Tenant que fiſt homage al pere ne ferra homage al fitz, pur ceo que quant vn Tenant ad fait vn foits homage a ſon Seignioꝛ il eſt excuſe pur terme de ſa vie de faire homage a aſcun auter heire del Seignioꝛ, mes vncoꝛe il ferra Fealtie al fitz & heire le Seignioꝛ, coment que il fiſt fealty a ſon Pere.

ALſo it is ſaid that if a man holds his Land of his Lord by Homage and Fealty, and he hath done homage and fealty to his Lord, and the Lord hath iſſue a Son and dies, and the Seigniory diſcendeth to the Son, in this caſe the Tenant which did homage to the Father, ſhall not do homage to the ſon, becauſe that when a Tenant hach once done homage to his Lord, he is excuſed for term of his life to do homage to any other heiꝛ of the Lord; but yet he ſhall do fealty to the Son and Heiꝛ of the Lord, although he did fealty to his Father.

(p) Britton, 175, 176.

which Littleton ſaith, that when a Tenant hath done once homage to his Lord, he is excuſed for term of his life to make homage to any other Heiꝛs of the Lord. But he ſhall do fealty to his ſon, albeit he hath done fealty to the father.

Sect.

Sect. 149.

¶ Item ſi le Sñr apres l' homage a luy fait per ſon tenant grant le ſervice de ſon tenant per le fait a un auter en fee, & le Tenant atturna, &c. donque le Tenant ne ſerra my compel de faire homage, mes il ſerra fealty, coñ et que il fiſt fealty devant a le grauntor. Car fealty eſt incident a cheſcun atturnement del Tenant, quant le Seignior eſt graunt. Mes ſi alcun home ſoit ſeiſie dun mannor, & un auter hõe tient de luy la terre com del mannor avantdit per homage, le quel Tenant ad fait homage a ſon Sñr q̃ eſt ſeiſie del mannor, ſi apres un eſtrange port Præcipe quod reddat envers le Sñr del mannor & recovera le mannor envers luy, et ſuiſt execution, en ceſt caſe le Tenant ſerra auterfoits homage a celuy q̃ recovera le mannor coment que il fiſt homage devant, p̃ ceo que leſtat celuy que receivoit le primer homage, eſt defeate per l' recovery, & ne girra en le bouche le Tenant a fauxer ou defeater le recovery que ſuit envers ſon Seignior. Et ſic vide diverſitatem en ceo

ALſo if the Lord after the Homage done unto him by the Tenant, grant the ſervice of his Tenant by Deed to another in fee, and the Tenant atturneth, &c. the Tenant ſhall not be compelled to do homage, but he ſhall do fealty, although he did fealty before to the grantor. For fealty is incident to every atturnement of the Tenant, when the Seigniory is granted. But if any man be ſeiſed of a Mannor, and another holds of him the Land as of the Mannor aforeſaid by Homage, which Tenant hath done homage to his Lord who is ſeiſed of the Mannor, if afterwards a ſtranger bringeth a *Præcipe quod reddat* againſt the Lord of the Mannor, and recovereth the Mannor againſt him, and ſues execution. In this caſe the Tenant ſhall again do homage to him which recovered the mannor, although he had done homage before, becauſe the eſtate of him which received the firſt homage is defeated by the recovery, and it ſhall not lie in the power of the Tenant to falſifie or defeat the recovery which was againſt his Lord. And ſo ſee a diver-

¶ *Item ſi le Sñr, &c. grant le ſervice de ſon Tenant per fait, &c.* Britton 176.

Note a diverſity when the Lord alieneth the ſeigniory, and when the tenant alieneth the tenancy, for when the Tenant hath done homage, & the ſeigniory is tranſferred to another either by the act of the party as alienation, or by act in Law, as deſcent, yet the tenant ſhall not iterat homage, as he ſhall do fealty, but when the Tenant doth homage, and alieneth the tenancy, there is a new Tenant, which never did homage, and therefore he ought to do homage to the Lord albeit his Alienor had done it before. And it is to be obſerved that none ſhall do * homage but the Tenant of the Land to the Lords of whom it is holden, & therefore if homage be due to be done by the Tenant, if the Tenant alieneth the Land to another, the Alienor cannot be compelled to do homage. 13. E. 1. tit. Per quæ ſervitia, 22. & tit. Gar. 91. * 8. E. 4. 27. b.

¶ *Averne, &c.* Here by (&c.) is to be underſtood that albeit he pay his rent, perform his annual ſervices, and do fealty which

with is a part of homage, yet homage he shall not do.

¶ *Mes si ascun home soit seisi dun mãnor, &c.* Here it appeareth that the case of the recovery of the Seigniory differeth from the alienation of the Lord, which is his own act, or the descent of the Seigniory to the Heir, which is an act in Law. And the reason of this diversity is, for that by the recovery, the state of him that reserved the homage, is defeated, for it shall not lie in the mouth of the Tenant, to falsifie, or to frustrate, or defeat the recovery which was against his Lord of the Mannor or Seigniory, for that the Tenant had nothing therein, and every man by Law ought to meddle in such cases with that which belongeth unto him, which is worthy of observation concerning falsifying of recoveries.

Vide Sect 551.
93. E. 3. Avowry 255.
37. H. 6 33. 39. H. 6. 34.
7. H. 7. 11. Doct. & Stud. fol. 45, 46. H. 8. Dyer 41.

Lou home vient a le Seigniorie per recoverie, & lou il vient per discent ou per graunt al Seigniorie.

sity in this case, where a man cometh to a Seigniory by recovery, and where he cometh to the same by discent or grant.

Note, that to falsifie, in legal understanding is to probe false, that is, to avoid, or as Littleton here saith, to defeat, in Latin fallare, seu falsificare, (i) fallum facere,

(i) 7. H. 8. cap. 4.

But since Littleton wrote, it is recited by Act of Parliament, That whereas divers, &c. have suffered recoveries against them of divers mannors, &c. for the performance of their Wills, for the surety of their Wives joyntures, &c. and the recoverors had no remedy to compel the freeholders and Tenants, &c to attorn unto them, nor could by order of Law attain to the rents, services, &c. that Act doth give the recoverors power to distrain and avow, whereupon many have thought, that this doth impugne Littleton's case of the Recovery. But distinguendum est: Littleton intendeth his case either upon a recovery by title, (for he saith, that the state of the Tenant in the recovery is defeated) or without any consent upon pretence of title, which is all one, for the Tenant cannot falsifie, and the Lord should avow as one that came in of a former title. And Littleton hath good authority in Law to warrant his opinion, and the Statute of 7. H. 8. extendeth to common recoveries had by consent and agreement, as appeareth by the Act it self, which then was, and yet is a common assurance and conveyance, whereof the Law taketh notice, and whereupon (as appeareth by the Act, an use might be limited. So as it is apparent, that such recoverors came in mesne under the state of the Lord, &c. and had no remedy (as the Statute saith) to compel the freeholders and Tenants to attorn, and without attornment, could neither distrain nor avow. Wherefore this Statute gave recoverors remedy to distrain, and a form to avow and justifie, which they had not before; as it appeareth by the Doctor and Student, who lived at that time: The body of the Act is, That such recoverors may distrain and make avowry, &c. as those persons against whom the said recovery is, should have done, &c. if the same recovery had not been had, and have like remedy, &c.

(a) 39. H. 6. 22. 37. H. 6. 38. 39. H. 6. 22.

28. H. 8. Dyer 41.

If a man had made a Lease for years, to begin at Michaelmas, reserving a rent, and before Michaelmas he had suffered a common recovery, the recoveror should distrain for that rent, which the Lessor before the recovery could not. But if the recovery had not been had, then he might have distrained, and so it is within the Statute: but if a fine had been levied of a Mannor, and before attornment the comusee had suffered a common recovery, the recoveror should not distrain, &c. because the comusee against whom the recovery was had, could not.

But this act extended only to distresses and Avowries for Rents, Services, and Customs, and gave also a form of Quare impedit. But upon this Statute it was holden, That the recoveror could not have an action of Debt against the Lessee for years, nor an Action of Waste against Tenant for life or years, and therefore remedy was provided in these cases,

21. H. 8 cap. 15.

by the Statute of 21. H. 8.

Sect. 150.

¶ *Vient a son seignior.* The Tenant ought to seek the Lord to do him homage, if the Lord be within England, for this service is personal as well of the Lords side, as of the Tenants side, for Law requi-

¶ Item si un Tenant que doit person Tenure faire a son Seignior Homage, vient a son Seignior, & dit a

Also if a Tenant which ought by his Tenure to do his Lord Homage, cometh to his Lord, and saith unto him, Sir, I

my

luy, Sir, ieo doy a vous faire homage pur les Tenements que ieo teigne de vous, & ieo ſue icy pris a vous faire homage pur meſmes les Tenements, pur que ieo vous pry, que ore ceo voilez receiver de moy.

ought to do homage unto you for the Tenements which I hold of you, and I am here ready to do homage to you for the ſame Tenements, and therefore I pray you, that you would now receive the ſame from me.

reth order and decency. And therefore Bracton ſaith, Et ſciendum, Quod ille qui homagium ſuum facere debet, obtentu reverentiæ quam debet Domino ſuo, adire debet Dominum ſuum ubicunque inventus fuerit in Regno, vel alibi ſi poſſit commode adiri, & non tenetur Dominus quærere ſuum tenentem, & ſic debet homagium ei facere. And the ſame Law it is for Fealty, and the difference between theſe ſervices, and the rent is becauſe that theſe are perſonal, and the rent may be paid and received by other, and therefore a tender of the Rent upon the Land is ſufficient.

Bracton fol. 80. a. And Britton, fol. 171. agreeth herewith.

Sect. 151.

¶ ET ſi le Seignior adonques refuſa de ceo receiver, donque apres tiel refuſal le Seignior ne poet diſtreiner le Tenant pur le homage aderere devant que le Seignior requeſtit le Tenant de faire a luy homage, & l'Tenant a ceo faire refuſa.

AND if the Lord ſhall then refuſe to receive this, then after ſuch refuſal the Lord cannot diſtrein the Tenant for the homage behind, before the Lord requireth the Tenant to do homage unto him, and the Tenant refuſe to do it.

¶ AND the reaſon hereof is, for that when the Tenant hath done his endeabour and duty to offer his corporal ſervice, and the Lord refuſeth the ſame, or do not accept his ſervice upon his tender thereof, (which is a refuſal in Law) then the Law in reſpect of the Lords fault, requireth, that before the Lord can diſtrain for it, that he doth require the Tenant to do that ſervice, and if he either refuſe to do it, or do it not when he is required, it is a refuſal in Law.

Vide Bracton. fol. 89. Britton 171, 172. 21. E. 3 24. 21. Aſſ. p. 73. 20. E. 3. Avowry 223. 45. E. 3. 9. 7. E. 4. 4. 21. E. 4. 17. 20. H. 6. 31.

Sect. 152.

¶ ITem home poit tener ſa terre per homage aunceſtrel, & per Eſcuage, ou per auter ſervice de Chivaler, auſibien ſicome il poyt teſter ſa tr per homage auncetrel en Socage.

ALſo a man may hold his Land by homage auncеſtrel, and by Eſcuage, or by other Knight Service, as well as he may hold his Land by Homage Auncеſtrel in Socage.

¶ SO as homage auncеſtrel may belong as well to a tenure by Eſcuage or Knights Service, as to a tenure in Socage, or to a tenure in nature of Socage, whereof there hath ſomewhat been ſpoken in the chapter of Socage.

¶ *Tenure per grand Serjeanty.* Serjeanty cometh of the French word (Sergeant) i. Satelles, and (a) Serjeantia idem est quod servitium. And it is called Magna Serjeantia, or Serjanteria, * or Magnum servitium, great service, as well in respect of the excellency and greatness of the person to whom it is to be done, (for it is to be done to the King only) as of the honor of the service it self; and so Littleton himself in this Section saith, that it is called magna serjeantia, or Magnum servitium, because it is greater and more worthy than Knights Service; for this is Revera servitium regale, and not Militare only. Fleta saith, Magna autem serjeantia dici potest, cum quis ad eundum cum Rege in exercitu eum equo cooperto vel hujusmodi ad patriæ tuitionem fuerit feoffatus.

(a) G'anvil lib. 9. ca. 4.
(b) Bracton lib 2. 35. & 84. 85. lib. 1. cap. 10.
* Fleta lib. 1. cap. 10. lib. 2. c. 9. in fine.
(c) Britton cap. 66. fol. 164, 165.
Ockam cap. quod non absolvitur.

¶ *De nostre Seignior le Roy.* This Tenure hath seven special properties. 1. To be holden of the King only. 2 It must be done when the tenant is able in proper person. 3. This service is certain and particular. 4. The relief due in respect of this tenure differeth from Knights Service. 5. It is to be done within the Realm. 6. It is subject to neither Aid pur faire fitz chivaleir, or file marier. And 7. it payeth no Escuage.

45. E. 3. 25. per Finchden. Fleta, ubi supra.

Bracton, lib. 2. 84.
11. H. 4. 34.
10. H. 4. Avowry 267.
F. N. B. 83.
10 H. 6. anc. demesne 11

¶ *Come de porter le banner de nostre Seignior le Roy ou de awesner son host.* This great service to the King may (as it appeareth hereby) concern the Wars and matters mi-

23. H. 3. tit. Gard Stat. de Ward. & relev. 23. E. 1.

¶ Tenure per grannd serieantie est lou un home tient ses terres ou tenements de nostre Seignior le Roy p tiels services que il doit en son proper person faire al Roy, come de porter l' banner de nostre seignior le Roy, ou sa lance, ou de awesner son host, ou destre son Mareschal, ou de porter lou espee devant luy a son corronement, ou destre s server a son corronement, ou son Carver, ou son Butler, ou destre un de ses Chamberlains de le receit de son Eschequer, ou de faire autres tiels services, &c. Et la cause que tiel service est appel grand seriesanty est, p ceo que il est pluis grand & pluis digne service que est le service en le tenure de escuage. Car celuy q tient p Escuage nest pas limite per la tenure de faire aleun pluis especial service que aleun auter que tient p Escuage doit faire. Mes celuy que

¶ Tenure by grand Serjeanty is where a man holds his Lands or Tenements of our Sovereign Lord the King by such services as he ought to do in his proper person to the King, as to carry the Banner of the King, or his Launce, or to lead his Army, or to be his Marshal, or to carry his Sword before him at his Coronation, or to be his Server at his Coronation, or his Carver, or his Butler, or to be one of his Chamberlains of the Receipt of his Exchequer, or to do other like Services, &c. And the cause why this Service is called Grand Serjeanty is, for that it is a greater and more worthy Service, than the Service in the Tenure of Escuage: For he which holdeth by Escuage is not limited by his Tenure to do any more especial Service, than any other which holdeth by Escuage ought to do, but he which holdeth by grand

tyent

tient p grand Serieanty doit faire un especial ſeruice al Roy, que il que tient per eſcuage ne doit faire.

Serjeanty ought to do ſome ſpecial Service to the King, which he that holds by Eſcuage ought not to do.

istary, for ſome Grand Serjeanties are to be done in the time of War for the ſafety of the Realm, and ſome in time of Peace for the honour of the Realm.

¶ *Ou deſte ſon Marſhall.* * If the King giveth Lands to a man to hold of him to be his Marſhal of his Hoſt, or to be Marſhal of England, or to be Conſtable of England, or to be High Steward of England, * Chamberlain of England, and the like, theſe are Grand Serjeanties, and theſe and ſuch like grand Serjeanties are of great and high Juriſdiction, and ſome of them concern matters Military in time of War, and ſome ſervices of honour in time of Peace. And this is to be obſerved, that though there were divers Lords Marſhals of England before the Reign of (z) R. 2. Yet King Richard 2. created Thomas Mowbrey Duke of Norfolk, and firſt Earl Marſhal of England, Per nomen comitis Mariſchali Angliæ.

* Fleta lib. 1. cap. 10. 11. Eliz. Dier 285. Cambden Brit. 286, 287. * Ockam cap. officium conſtabularii.

(z) In rot. patent. de anno 20. R. 2.

¶ *Ou de porter ſon eſpee, &c. ou deſter ſon ſewer a ſon Coronement, &c.* Theſe and ſuch like Grand Serjeanties at the Kings Coronation are ſervices of Honour in time of Peace.

¶ *Deſte un de ſes Chamberlaines, &c. ou de faire autiels ſervices.* It is alſo a Tenure by Grand Serjeanty to hold (a) by any office to be done in perſon concerning the receipt of the Kings Treaſure, Quia theſaurus regis reſpicit regem & regnum; And cenſus regius eſt anima Reip. ſo it is Firmamentum belli, & Ornamentum pacis.

(a) Vid. 51. H. 3 ſtatut. 5. 10. E. 3. c. 11. 14. E. 3. c. 14. 26. H. 8. c. 2. 34. & 35. H. 8. c. 16. 11. E. 4. fol. 1. Pl. Com. 207. 208.

Milites camerarii dicuntur, quia pro camerariis miniſtrant; and concerning their Office, this is the effect, as Ockam (b) ſaith, Officium camerariorum in recepta conſiſtit in tribus, Scilicet, claves arcarum, &c. baiulant, pecuniam numeratam ponderant, & per centenas libras in ſopulas mittunt. But diſcontinuance in effect hath worn out their Office. And yet they continue their name, and keep the keys of the Treaſury where the Records do lie.

(b) Ockam cap. quid ſit Scaccarium. Gervaſius Tilburienſis in libro nigro ſub cuſtodia camerariorum.

And another ſaith, Camerarius dicitur à camera, quia camera eſt ubi locus in quem theſaurus recolligitur, vel conclave in quo pecunia reſervatur. So as camerarius in legal ſignification eſt cuſtos regii cenſus: and Willielmus de Bellocampo comes Warwici (held) officium Camerarii in Scaccario.

Rot. clauſ. 6. E. 1. mem. 1.

Or by any Office concerning the adminiſtration of Juſtice, quia juſtic à firmatur ſolium.

Ex lectura Marrowe.

It appeareth by an ancient Record (c) that Varianus de ſancto Petro tenuit de domino rege in capite medietatem ſerjeantiæ pacis per ſervicium inveniendi decem ſervientes pacis ad cuſtodiendam pacem in Ceſtria.

(c) Ex inquiſitione poſt mortem Uriani de ſancto Petro. 4. E. 2. Ceſtr.

See Ockam of the inſtitution and ancient Order of the Exchequer, Dier 4. Eliz 213. the Uſhery of the Exchequer holden by Grand Serjeanty. Vid. 7. Aſſ. 12. 7. E 3. 57.

¶ *Tiels ſervices, &c.* Hereby (&c.) is to be underſtood other like ſervices not expreſſed, as partly appeareth by that which hath been ſaid, viz. to be Steward of England, Conſtable of England, Chamberlain of England, and other honourable ſervices, whereof more ſhall be ſaid in this Chapter.

¶ *Ou un eſpecial ſervice al roy.* That is to ſay, that this great ſervice be ſpecially ſet down, for it may conſiſt of divers branches, as to go with the King in his War in the foreward, and to return in the rereward. And alſo to pay Rent, &c. but yet it muſt be certain and particular.

23. H. 3. gard. 148.

Sect. 154.

¶ Item ſi tenant que tient per eſcuage mozuſt ſon heire eſteant de pleine age, ſil tenoit per un fee de chibaler, le heire ne paiera forſqz C. s. pur reliefe, come eſt ordeine per l' ſtatute de Magna Charta, cap. 2. Mes ſi celuy que tient de Roy per grand

ALſo if a Tenant which holds by Eſcuage dieth his Heir being of full age, if he holdeth by one Knights fee, the Heir ſhall pay but a C. s. for relief, as is ordained by the Statute of *Magna Carta*, c. 2. But if he which holdeth of the King by Grand Serjeanty

Serieantie mozuſt, ſon heir eſteant de plein age, le heire paiera al Roy pur reliefe le value de ſes terres ou tenements per an (ouſter les charges & repriſes) queux il tient del Roy per grand Serieantie. Et eſt aſcavoir, que Serjeantia en Latin, idem eſt quod ſervitium, & ſic Magna Serjeantia, idem eſt quod magnum ſervitium.

dieth, his heir being of full age, the heir ſhall pay to the King for relief one years value of the Lands or Tenements which he holdeth of the King by Grand Serjeanty over and beſides all charges and repriſes. And it is to be underſtood, that *Serjeantia* in Latin, is the ſame *quod ſervitium*, and ſo *Magna Serjeantia* is the ſame *quod magnum ſervitium*.

11. H. 4. 72. b.

¶ *Paiera al Roy pur reliefe le value de ſes terres, &c.* And herewith agreeth 11. H. 4. 72. b.

¶ *Serjeantia idem eſt quod ſervitium.* Hereby it appeareth that the explanation of ancient words, and the true ſenſe of them are requiſite, and to be underſtood per verba notiora.

Sect. 155.

¶ *Tenants per eſcuage doient faire lour ſervice hors del Roialme.*

F. N. B. 83. E.

For he that holdeth by Cornage or Caſtle-guard holdeth by Knights Service, and is to do his Service within the Realm, but he holdeth not by Eſcuage; and therefore Littleton materially ſaid Tenant per Eſcuage, and not Tenant by Knights Service.

¶ Item ceux que teignont per eſcuage doient faire lour ſerbice hozs de roialme, mez ceux que teignont per graund ſerieantie, pur le greindr part doient faire lour ſerbices deins le Roialme.

ALſo they which hold by Eſcuage, ought to do their Service out of the Realm, but they which hold by Grand Serjeanty (for the moſt part) ought to do their Services within the Realm.

¶ *Pur le greinder part.* For to bear the Kings Banner, or his Launce, or to lead his Hoſt, and to be his Marſhal, &c. may be as well without the Realm, and therefore Littleton ſaid (for the greateſt part.)

Sect. 156.

4. H. 5. cap. 7. 22. E. 4. cap. 8. Cambden in Britannia.

¶ *En l' marches de Scotland.* Marches is either a Saxon word and ſignifieth, limites, bourdours, or an Engliſh word, viz. Marks. Nota, for that it lieth near to Scotland, it is ſaid in the Marches of Scotland, and yet the Land

¶ Item il eſt dit, que en le Marches de Scotland, aſcuns teignont de Roy per Cornage, ceſta-ſcaboir, pur bentier un cornu, pur garner homes de pais quant ils oyent que le Scottes, ou auters enemies beignont ou boilent enter en Engleterre, quel ſerbice eſt

ALſo it is ſaid that in the Marches of Scotland ſome hold of the King by Cornage, that is to ſay, to wind a Horn to give men of the Country warning when they hear that the Scots or other Enemies are come or will enter into *England*, which Service is grand Serjeanty.

graund

graund Serieanty. Mes si alcun tenant tient dalcun auter Seignior que de Roy per tiel ſerbice de Cornage, ceo neſt pas grand Serieantie, mes eſt ſerbice de chivaler, & trait a luy garde & mariage, car nul poit tener per grand Serieanty ſi non de Roy tantſolement.

But if any Tenant hold of any other Lord than of the King by ſuch Service of Cornage, this is not grand Serjeanty, but it is Knights Service, and it draweth to it Ward and Marriage, for none may hold by grand Serjeanty, but of the King only.

whereof Littleton here ſpeaketh, lieth in England.

¶ *Per Cornage.* Cornagium is derived (as cornuare alſo is) à cornu, and is as much (as before hath been noted) as the ſervice of the Horn. It is alſo called in old Books Horngeld.

Note a tenure by Cornage of a common perſon is Knights

23. H. 8. tit. gard. 148. 8. E. 3. 66. in fine. 16. E. 3. avowry 90. F. N. b. 83.

Service, of the King it is grand Serjeanty, ſo as the Royal Dignity of the perſon of the Lord maketh the difference of the tenure in this caſe. And I find that there were Cornicularii among the Romans, and dicti fuerunt cornicularii quia cornu faciebant excubias militares, and Magna Serjeantia is appropriated only to this tenure.

Sect. 157.

¶ Item home poit beier Anno 11. H. 4. que Cockayne adonque chiefe Baron deſchequer, vient en le common banke, portant obeſques luy la Copie dun record in hæc verba; Talis tenet tantam terram de domino rege per Serjeantiam, ad inveniendum unum hominem ad guerram ubicunque infra quatuor Maria, &c. Et il demaunda ſil fuit graund Serieanty ou petite ſerieantie. Et Hanke, adonques diſoit, que il fuit graunde Serieantie, pur ceo que il ad ſerbice a faire p corps dun home, & ſil ne purra trober nul home a faire l' ſerbice pur luy, il meſme doit faire. Quod alii

ALſo a man may ſee in *An.* 11. *H.* 4. that *Cockayne* then Chief Baron of the Exchequer came into the Common Place, and brought with him the Copy of a Record in theſe words. *Talis tenet tantam terram de Domino Rege per Serjeantiam ad inveniendum unū hominem ad guerram ubicunq; infra quatuor Maria, &c.* And he demanded if this were Grand Serjeanty, or petite Serjeanty. And *Hank* then ſaid, that it was grand Serjeanty, becauſe he had a ſervice to do by the body of a man, and if he cannot find a man to do the Service for him, he himſelf ought to do it. *Quod alii Juſticiarii conceſ-*

¶ *Et ſil ne purra trover nul home a faire le ſervice pur luy, &c.* Hereby it appears that Tenant by Grand Serjeanty, may in ſome caſes make a Deputy, and therefore the diverſity is, that where the Grand Serjeanty is to be done to the Royal Perſon of the King, or to execute one of thoſe high and great Offices, there his Tenant cannot make a Deputy without the Kings Licence, and therefore Littleton hath ſaid before that ſuch ſervices are to be done in proper perſon. But he that holdeth to ſerve him in his War within the Realm or by Cornage may make a Deputy.

11. H. 4. 72. 24. E. 3. 32. Vid. Hill. 8. E. 1. Middle inter Placita de Banco. Sir John Moyſe Caſe.

11. H. 4. 72.

(*) Johannes de Archier qui tenet de Domino Rege in capite per Serjeantiam archerie, &c. in Comitatu Glouc. hæres in cuſtodia,

(*) Clauſ. 18. H. 3. M. 5.

¶ *Infra quatuor Maria.* That it is within the Kingdom of England, and the Dominions of the ſame Kingdom.

Rot. Eſchaetor. 41. H. 3. nu. 23. Stephen Haringdon's Caſe.

Now is good to be ſeen what perſons that hold by Grand Serjeanty may do and perform that honourable ſervice in Perſon, and who ought not to be received thereunto

unto, but ought to make a ſufficient Deputy. At the Coronation of (a) King R. 2. John Wiltſhire Citizen of London exhibited his Petition to the High Steward of England in his Court, that where the ſaid John held certain Lands in Hayden in the County of Eſſex, of the King by Grand Serjeanty, viz. to hold a Towel when the King ſhould waſh his hands before dinner the day of his Coronation, &c. and prayed that he might be accepted to do this Office of Grand Serjeanty: the judgment followeth, Et quia apparet per record' de Scaccario Domini Regis in Curia monſtrat' quod prædicta tenementa tenentur de Domino Rege per ſervitium prædictum, Ideo dictus Johannes admittitur ad ſervitium ſuum hujuſmodi faciendum per Edmondum Comitem Cantabrigiæ deputatum ſuum, & ſic idem Comes in jure ipſius Johannis Manutergium tenuit quando Dominus Rex lavabat manus ſuas dicto die Coronationis ſuæ ante prandium.

(a) 1. R. 2. Rot. clauſ. m. 45.

By which Record it appeareth, that the ſaid John Wiltſhire being of his quality, and having not any dignity, could not do and perform this high and honourable ſervice to the Royal Perſon of the King, but did make an honourable Deputy who performed it in his right, which is worthy of obſervation.

Vide 1. R. 2. memb. 45. At the ſame Coronation William Furneval exhibited his Petition in the ſame Court, that where he held the Mannor of Farnham, in the County of Bucks, with the Hamlet of Cere in the ſame County, by the ſervice to find to the King at his Coronation a Globe for his right hand, and to ſupport the Kings right hand the ſame day, while he held in his hand the Verge Royal: the judgment followeth. Qua quidem Petitione debite intellecta, & facta publica proclamatione ſi quis clameo ipſius Willielmi in ea parte contradicere vellet, nemineque ei contrariante, conſideratum fuit, quod idem Willielmus aſſumpto per eum primitus ordine militari, ad ſervitium prædictum admitteretur faciendum, & poſtmodo (videlicet) die Martis proximo ante Coronationem prædictam Dominus Rex ipſum Willielmum apud Kenington honorifice præfecit in militem, & ſic idem Willielmus ſervitium ſuum prædictum, dicto die Coronationis juxta conſideracionem prædictam perfecit & in omnibus adimplevit. By which it appeareth, that a Knight is of that dignity, that he may perform this high and honourable ſervice in his own perſon; and although this William Furneval was deſcended of an honourable Family, yet before he was created Knight he could not perform it.

And Sir John de Argentine Chivalier performed the ſervice of Grand Serjeanty, to be the Kings Cup-bearer at the ſame Coronation.

(m) Vide 1. R. 2. m. 45. (m) Anne, which was the Wife of Sir John Haſtings Earl of Pembroke who held the Mannor of Aſhley in Norfolk of the King by Grand Serjeanty, viz. to perform the Office of the Napery at his Coronation, was adjudged to make a Deputy, becauſe a woman cannot do it in perſon; and thereupon ſhe deputed Sir Thomas Blount Knight, who performed the ſame in her right. John Son and Heir of John Haſtings Earl of Pembroke, exhibited in the ſame Court his Petition, ſhewing that by his tenure he was to carry the great Spurs of Gold before the King at his Coronation, &c. The Judgment is, Audita & intellecta billa prædicta, pro eo quod dictus Johannes eſt infra ætatem, & in cuſtodia Domini Regis, quanquam ſufficienter oſtenditur per records, & evidentias, quod ipſe ſervitium prædictum facere deberet. Conſideratum extitit, quod eſſet ad voluntatem Regis, quis dictum ſervitium iſta vice in jure ipſius Johannis faceret, & ſuper hoc Dominus Rex aſſignavit Edmundum Comitem Marchiæ ad deferendum dicto die Coronationis prædicta calcaria in jure præfati hæredis, ſalvo jure alterius cujuſcunque. Et ſic idem Comes Marchiæ Calcaria illa prædicto die Coronationis coram ipſo Domino Rege deferebat.

Vide 1 R. 2. m. 45.

By which it appeareth, that the Heir before he hath accompliſhed his age of one and twenty years, cannot perform this great and honourable ſervice; but during his minority the King ſhall appoint one to perform the ſervice.

Juſticiarii conceſſerunt. (Cokain) **Donque doit le tenant en ceo cas paier reliefe al value del terre per an?** Ad quod non fuit reſponſum.

ſerunt. Then ſaith *Cokain*, ought the Tenant to pay relief to the value of the Land by the year? *Ad quod non fuit reſponſum.*

Sect. 158.

46. E 3. 15. 1. per Finchden. HEre Littleton ſaith that he that holds by Grand Serjeanty, doth hold by Knights

ET nota que touts que teignont de Roy p grand

AND note that all which hold of the King by Grand Ser-

Serieanty, teignont de Roy per ſervice de chivalrie, & le Roy p̄ ceo avera garde, mariage, & reliefe; mes le Roy navera de eux Eſcuage, ſi ils ne teignont de luy per Eſcuage.

Serjeanty, hold of the King by Knights ſervice, and the King for this ſhall have Ward, Marriage, and Relief; but he ſhall not have of them Eſcuage, unleſs they hold of him by Eſcuage.

Herbite which is ſo ſaid of the effects. And therefore Littleton doth add that the King ſhall have Ward, Marriage, and Relief, which are the effects of Knights Herbite, &c.

Sometimes in ancient Records, Servitium Militare, is called Servitium Hauberticum, or Servitium Brigandinum, or Servitium Loricatum. And a Haubert or Brigandine ſignifieth a Coat of Male.

Chap. 9. Petit Serjeanty. *Sect.* 159.

Tenure p petit Serieanty eſt lou hõe tiēt ſa tr̄ d̄ noſtre Sñr̄ le Roy, d̄ render al Roy annualmt un arke, ou un eſpee, ou un dagger, ou un cuttel, ou un Launce ou un paier de Gants de ferre, ou un paire de Spours doze, ou un ſete, ou divers ſetes, ou de render aukes tiels petit choſes touchants le guerre.

TEnure by Petit Serjeanty is where a man holds his Land of our Sovereign Lord the King, to yield to him yearly, a Bow, or a Sword, or a Dagger, or a Knife, or a Lance, or a pair of Gloves of mail, or a pair of gilt Spurs, or an Arrow, or divers Arrows, and to yield ſuch other ſmall things belonging to War.

De noſtre Seignior le Roy. And ſo Littleton concludeth this Chapter, that a man cannot hold by Grand Serjeanty or Petite Serjeanty, but of the King, and of the King as of his perſon, and not of any Honour or Mannor. And it is to be obſerved that regularly a Tenure of the King as of his Perſon is a Tenure in Capite, ſo called κατ' ἐξοχην propter excellentiam, becauſe the head is the principal part of the body, and he that holdeth of any common perſon as of his perſon, he in truth holdeth in capite; but again κατ' ἐξοχην it is only in common underſtanding applyed to the King, and that Seigniory of a common perſon is called a Tenure in groſs, that is by it ſelf, and not linked, or tied to any Mannor, &c. Britton fol. 164. Bracton lib. 2. fol. 35. Fleta lib. 2. cap. 9. Ockam cap. quid de avibus oblatis.

And this Tenure of the King in Capite, is ſaid (a) to be a Tenure of the King as of his Crown, that is, as he is King. (b) And therefore if one holdeth Land of a common perſon in groſs as of his perſon, and not of any Mannor, &c. and this Seigniory eſcheateth to the King (yea though it be by attainder of Treaſon) he holdeth of the perſon of the King, and not in Capite, becauſe the original tenure was not created by the King. And therefore it is diverſly ſaid, that a Tenure of the King in Capite is when the Land is not holden of the King as of any Honor, Caſtle, or Mannor, &c. But when the Land is holden of the King as of his Crown. (a) Bracton l. 2. fol. 87. (b) 3. E. 3. tenures, B. 94. 30. H. 8. 43. 23. H. 8. Livery. B. 57. 29 H. 8. ibid. 58. 6. H. 8. Dier, 58. Vide Leſtatute de 1. E. 6. cap. 4. F. N. B. 5. K.

Note that an Honour is the moſt noble Seigniory of all others, and originally created by the King, but may afterward be granted to others. See for the Creation of an Honor, 13 H. 8. c. 5. 33. H. 8. c. 37. 38. 37 H. 8. c. 18.

And it is to be obſerved that a man may hold of the King in Capite, or of his Crown as well in ſocage as by Knights ſervice.

De render al Roy annualment un arke, ou un eſpee, &c. As grand Serjeanty muſt be done by the body of a man, ſo petite Serjeanty hath nothing to do with the body of a man, but to render ſome things touching War. as a Bow, a Sword, a Dagger, a Knife, a Launce, a pair of Gantlets of Iron, or Shafts, and ſuch like. Magna Chart. c. 27.

It is to be obſerved that grand Serjeanty or Knights ſervice is not in Law called Liberum ſervitium, as ſocage is, but per ſcodum unius militis, &c but to find the King ſo many Ships for Regiſt. fol. 2. F. N. B. fo. 1.

for his paſſage is called liberum ſervitium, and therefore it is ſaid, Per liberum ſervitium ad inveniendum nobis quinque naves ad tranſitum noſtrum ad mandatum noſtrum. And therefore clearly ſuch a Tenure is neither Grand Serjeanty, nor Knights Service, becauſe nothing is to be done by the body of any man, nor in that caſe, touching War, but Ships to be found. And this is the reaſon that Littleton pleadeth of the examples he doth here put, becauſe that ſuch a Tenant by his Tenure ought not to go, nor to do any thing in his perſon touching War. And herewith agreeth Bracton, Ex parvis Serjeantiis quæ non reſpiciunt Regem, nec Patriæ defenſionem nullum competere debet maritagium nec cuſtodiam, &c.

Bract. li. 2. fol. 35.

9. H. 3. Gard. 145.

If a man holdeth Land of the King, to find an Horſe of ſuch a price, and a ſaddle, and a bridle by forty days, or any other time when the King goeth with his Army againſt Wales, this is Petit Serjeanty, and no Grand Serjeanty for the cauſe aforeſaid.

Sect. 160.

¶ *Tiel ſerviceneſt forſque ſocage, &c.* But as it hath been ſaid, the dignity of the perſon of the King giveth the name of Petit Serjeanty, which in caſe of a common perſon ſhould be called plain ſocage ab effectu: for it ſhall have ſuch effects or incidents as belong to Socage, and neither ward nor marriage, &c. for they belong to Knights ſervice.

9 H. 3. Gard. 145.

Of this Tenure the Great Charter in the perſon of the King ſaith thus, Nos non habebimus cuſtodiam hæredis, &c. occaſione alicujus parvæ Serjeantiæ, quam tenet de nobis per ſervitium reddendo nobis cultellos, ſagittas, &c.

Magna Chart. cap. 28. Vid. Stat. de Wardis & Relevis. 28. E. 1.

¶ Et tiel ſerbice ne ſoyez Socage en effect, pur ceo que tiel Tenant per ſon Tenure ne doit aler ne faire aſcun choſe en ſon proper perſon, touchant le guerre, mes de render & payer annualment certaine choſes al Roy, ſicome home doyt payer un Rent.

And ſuch ſervice is but Socage in effect, becauſe that ſuch Tenant by his Tenure ought not to go nor do any thing in his proper perſon touching the War, but to render and pay yearly certain things to the King, as a man ought to pay a Rent.

Sect. 161.

¶ Of this ſufficient hath been ſaid before, ſaving that parva Serjeantia is only appropriate to this Tenure.

Vide Sect. 1.

¶ Et nota que home ne poyt tener per grand Serjeantie, ne per petit Serjeanty, ſi non de Roy, &c.

And note that a man cannot hold by grand Serjeanty, nor by petit Serjeanty, but of the King, &c.

Bracton, lib. 3. Tract. 2. Britton, fol. 164. Mirror, cap. 2. Sect. 18. Lib. 10. fol. 123, 124. The Mayor of Lynns Caſe. 40. Aſſ. p. 27. 43. E. 3. 32, 21. E. 4. 53, & 54. 21. H. 7. 15. 2. E. 3. c. 3.

Burgage, In Latin Burgagium, is derived of this Word Burgus, which is Vicus, Pagus, or Villa, a Town, and it is called a Burgh, becauſe it ſendeth Burgeſſes to Parliament.

¶ Tenure en Burgage eſt lou antient Burgh eſt, ou que l' Roy ſ Seignior, &

¶ Tenure in Burgage is where an ancient Burrough is, of which the King is lord

(b) Bracton, l. 3. fol. 124. Fleta, lib. 1. c. 47.

Of Burghs ſome be incorporate, and ſome not; and ſome be walled, and ſome not. (b) In

cent

ceux que ont Tenements deins le Burgh teignont del Roy lour Tenements que chescun Tenant pur ſon Tenement doit payer al Roy un certain Rent per an, &c. Et tiel Tenure nest forſque Tenure en Socage.

and they that have tenements within the Burrough, hold of the King their Tenements, and every Tenant for his Tenement ought to pay to the King a certain rent by year, &c. and ſuch Tenure is but Tenure in Socage.

was in former times taken for thoſe Companies of ten Families, which were one anothers pledge, and therefore a pledge in the Saxon tongue a Borhoe, whereof (ſome take it) that a Burgh came, whereof alſo cometh Headborough or Borowhead, Capitalis Plegius, a Chief Pledge, viz. the Chief man of the Borhoe, whom Bracton calleth Prithburgus; and hereof alſo cometh Burghbote, which as Fleta ſaith, ſignifieth Quietancium reparationis murorum civitatis aut Burgi.

Every City is a Burgh, but every Burgh is not a City, whereof more ſhall be ſaid hereafter. And the termination of this word Burgagium, (as before hath been noted) ſignifieth the ſervice whereby the Burgh is holden. And of this word (Burgh) two antient and noble Families take their names, viz. de Burgo, and de Burgo caro, Burchier.

¶ *De que le Roy eſt Seignior.* But it may be holden of another, as by that which immediately followeth appeareth. F. N. B. 64. d.

Sect. 163.

¶ Et meſme le maner eſt, lou un auter Seignior Eſperitual ou Tempozal, eſt Seignioz de tiel Burgh, & les Tenants de Tenements en tiel Burgh teignont de lour Seignioz a payer chescun de eux un annual Rent.

And the ſame maner is, where another Lord Spiritual or Temporall is Lord of ſuch a Burrough, and the Tenants of the Tenements in ſuch a Burrough hold of their Lord, to pay each of them yearly an annual Rent.

¶ This is evident, & needeth no explanation, only this by the way is to be obſerved, that Biſhops being Lords of Parliament, have not been called Lords Spiritual ſo lately, as ſome have imagined. 16. R. 2. c. 5. 1. H. 4. c. 2. &c.

Sect. 164.

¶ Et eſt appel tenur̃ ẽ burgage, pur ceo que les tenements deins l' burgh ſont tenus del Seignioz del Burgh p certaine rent, &c. Et eſt aſcavoire q̃ les antient villes appel

And it is called Tenure in Burgage, for that the tenements within the Burrough be holden of the Lord of the Burrough by certain rent, &c. And it is to wit that the antient Towns called Burroughs, be

¶ *Per certaine Rent, &c.* By (&c.) there is implied fealty and other ſervice, as to repair the houſe of the Lord, &c.

¶ *Les antient villes appel Burghes.* So as a Burgh is an antient Town holden of the King or any other Lord which ſendeth Burgeſſes to the Parliament.

And it is to be obſerved, that Burgh and Bury have all one ſignification, as Canterbury, Bury Saint Edmond, Sudbury, Salisbury, Banbury, Heytesbury, Malmesbury, Shaftesbury,

Teukesbury, and others ſend Burgeſſes to the Parliament, Vide pro Villis, Parochiis & Hamlettis poſtea, Section 171.

¶ *Cities.* Civitas, whereof cometh the word City. A City is a Borough incorporate, which hath, or hath had a Biſhop: and though the Biſhoprick be diſſolved, yet the City remaineth.

Lamb. fol. 125.

In the time of William the Conquerour it is declared in theſe words, Item nullum mercatum, vel forum ſit, nec fieri permittatur niſi in civitatibus regni noſtri, & in Burgis clauſis & muro vallatis & caſtellis, & locis tutiſſimis, ubi conſuetudines regni noſtri, & jus noſtrum commune, & dignitates coronæ noſtræ quæ conſtitutæ ſunt à bonis prædeceſſoribus noſtris deperire non poſſunt, nec defraudari, nec violari, ſed omnia rite, & per judicium & juſtitiam fieri debent: & ideo caſtella & burgi & civitates ſunt & fundatæ & ædificatæ ſcilicet ad tuitionem gentium, & populorum regni, & ad defenſionem regni, & idcirco obſervari debent cum omni libertate, & integritate, & ratione. So as by this it appeareth that Cities were inſtituted for three purpoſes: Firſt, Ad conſuetudines regni noſtri, & jus noſtrum commune & dignitates coronæ noſtræ conſervand'. 2. Ad tuitionem gentium & populorum Regni. And thirdly, Ad defenſionem Regni. For conſervation of Laws, whereby every man enjoyeth his own in peace: for tuition and defence of the Kings Subjects, and for keeping the Kings peace in time of ſudden uproars. And laſtly for defence of the Realm againſt outward or inward hoſtility.

Burghs ſont les pluis ancient vills q̄ ſont deins Engleterre, car ceux villes q̄ ore ſont Cities, ou Counties, en ancient temps fueront Burghes, & appelles Burghes, car ō tiels ancient villes, appelles Burghes, veignont les Burgeſſes al Parliament, quant le Roy ad ſummon ſon Parliament.

the moſt antient Towns that be within England, for the Towns that now be Cities or Counties, in old time were Boroughs, and called Boroughs, for of ſuch old Towns call'd Boroughs, come the Burgeſſes of the Parliament, to the Parliament, when the King hath ſummoned his Parliament.

Mirror. c. 2. ſect. 18. Britton, fol. 87.

Civitas & urbs in hoc differunt, quod incolæ dicuntur civitas, urbs verò complectitur ædificia, but with us the one is commonly taken for the other. Villeins ſont coultivers de fiefe demurrants in villages upland, car de ville eſt dit villeine, & de Boroughes Burgeſſes, & de Cities, Citizens.

Mich. 7. R. 2. Rot. 2. (which was in Anno Dom. 1195.) in an Aſſ. of darrein preſentment for the Church of St. Peters in Cambridge.

Every Borough incorporate that had a Biſhop within time of memory is a City, albeit the Biſhoprick be diſſolved, as Weſtminſter had of late a Biſhop, and therefore it yet remains a City. The Burgh of Cambridge an antient City, as it appeareth by a judicial Record (which is to be preferred before all others) where Mos civitatis Cantabrigiæ is found by the oath of 12. men the recognitors of that aſſiſe, which (omitting many others) I thought good to mention, in remembrance of my lobe and duty Almæ Matri Academiæ Cantabrigiæ.

There be within England two Archbiſhopricks, and 23. other Biſhopricks; therefore ſo many Cities there be, and Cambridge and Weſtminſter being added, there are in all 27. Cities within this Realm, and may be more, then at this time I can call to memory.

It is not neceſſary that a City be a County of it ſelf, as Cambridge, Ely, Weſtminſter, &c. are Cities, but are no Counties of themſelves, but are part of the Counties where they be.

¶ *Counties.* Or Shires, the one taken from the French, the other from the Saxon, in Lat^in Comitatus. Counties are certain Circuits or parts of the Kingdom into the which the whole Realm was divided for the better government thereof, ſo as there is no Land, but it is within ſome County. And every of them is governed by a yearly Officer which we call a Shireve. Which name is compounded of theſe two Saxon words Shire and reve, (i) præpoſitus or præfectus comitatus; but hereof more hereafter in his proper place ſhall be ſpoken. There be in England 41. Counties, and in Wales 12.

Lib. 10. fo. 123. 124. Vide Devant ſect. 97.

¶ *Veignons les Burgeſſes al Parliament, &c.* Parliament is the higheſt and moſt honourable and abſolute Court of Juſtice of England, conſiſting of the King, the Lords of Parliament, and the Commons. And again, the Lords are here divided into two ſorts, viz. Spiritual and Temporal. And the Commons are divided into three parts, viz. into Knights of Shires or Counties, Citizens out of Cities, and Burgeſſes out of Boroughs. The words of the Writ to the Sheriff for the election being, Duos milites gladiis cinctos magis idoneos, & diſcretos comitatus tui, & de qualibet civitate comitatus tui duos cives, & de quolibet

quolibet Burgo duos Burgenſes de diſcretioribus, & magis ſufficientibus, &c. All which have voices and ſuffrages in Parliament: You ſhall read in the Parliament Rolls, that (as hath been ſaid) there is Lex & conſuetudo Parliamenti quæ quidem lex quærenda eſt ab omnibus, ignorata à multis & cognita à paucis. Of the members of this Court ſome be by deſcent, as antient Noblemen, ſome by creation, as Nobles newly created, ſome by ſucceſſion, as Biſhops, ſome by election, as Knights, Citizens, and Burgeſſes. Vide Sect. 3.

It is called Parliament, becauſe every Member of that Court ſhould ſincerely and diſcreetly Parler la ment for the general good of the Common-wealth. Which name it hath alſo in Scotland, and this name before the Conqueſt was uſed in (a) the time of Edward the Confeſſor, William the Conqueror, &c. It was anciently before the Conqueſt called Michel Synoth, michel gemote, calſa Witenage mote, that is to ſay, the great Court or Meeting of the King, and of all the Wiſe men; ſometime of the King with the counſel of his Biſhops, Nobles, and the wiſeſt of his people. This Court the Frenchman calleth Les Eſtates, or Laſſemblée des Eſtates. In Germany it is called a Diet, for thoſe other Courts in France that are called Parliaments, they are but ordinary Courts of Juſtice, and (as Paulus Jovius affirmeth) were firſt eſtabliſhed by us. 4. H. 8. cap. 8. (a) Treatiſe de modo tenend. Parliam. 21. E. 3. fo. 60. 2. Johannes de Rupicella tempore regis Johannis. Pol. Virgil. l. 3. tempore H. 1. W. 1. 3. E. 1. in the title.

The King of England is armed with divers Councels, one whereof is called Commune Concilium, and that is the Court of Parliament, and ſo it is legally called in Writs and judicial proceedings Commune Concilium Regni Angliæ. And another is called (b) Magnum Concilium: this is ſometime applied to the upper houſe of Parliament, and ſometime out of Parliament time to the Peers of the Realm, Lords of Parliament, who are called Magnum Concilium Regis; for the proof whereof take one (c) Record for many in the fifth year of King H. 4. at what time there was an exchange made between the King and the Earl of Northumberland, whereby the King promiſeth to deliver to the Earl lands to the value, &c. Per advice & aſſent des eſtates de ſon Realme & de ſon Parliament (parenſi que Parliament ſoit devant le feaſt de St. Lucy) ou auterment per advice de ſon graund councel, & auters Eſtates de ſon Realme, que le Roy ferra aſſembler devant le dit feaſt, in caſe que le Parliament ne ſoit. And herewith agreeth the Act of Parliament in 37. E. 3. cap. 18. where it is ſaid before the Chancellor, Treaſurer, and great Council. Thirdly (as every man knoweth) the King hath a Privy Council for matters of State, (as for example) (d) Henricus de bello monte Baro de magno & de privato concilio regis juratus: and many others before and after. The fourth Council of the King are his Judges of the Law for Law matters, and this appeareth frequently in our (e) Books, and muſt be intended, when it is ſpoken generally by the Council it is to be underſtood Secundum ſubjectam materiam; for example, if it be legal, then by the Kings Council of the Law, viz. his Judges. (b) Bracton l. 1. c. 2. Regiſt. 280. (c) 27. Aug. 5. H. 4. (d) In Dorſ. Clauſ. 16. E. 2. M. 5. (e) 43. Aſſ. 15. 27. H. 6. 5. 1. R. 3. 11. Regi. 191. 123. 4. E. 3. 2. 39. E. 3. 35. 3. Aſſ. 15. 19. E. 3. judgment 174. W. 1. ca. 1. Laſtat. de templar. 16. R. 2. ſtat. de Præmunire.

Now for the Antiquity of this high Court of Parliament, whereof Littleton here ſpeaketh; it appeareth that divers Parliaments have been holden long before and until the time of the Conqueror, which be in print, and many more appearing in antient Records and Manuſcripts. (f) Le Roy Alfred aſſembler ſes Counties, &c. & ordeina pur uſage perpetual que deux foitz per an ou pluis ſovent pur miſter in temps de peace ſe aſſemblerent a Londres a Parlementer ſur le guidament del people de Dieu, & coment ſoy garderent de peeher, viveront en quiet, & receiveront droit per uſages, & ſanits judgements per ceſte eſtate ſe ſieront pluſors ordinances per pluſors Roys jeſque a temps le Roy que ore eſt, que fuit le Roy E. 1. The concluſion of that great Parliament holden by King Athelſtan at Grately is very remarkable, which I have ſeen in theſe words: All this was enacted in that great Synod or Council at Grately, whereat was the Archbiſhop Wolfhelme, with all the Noblemen and wiſe men which King Athelſtan called together. See the ſame publiſhed by Mr. Lambert. (f) Mirror c. 1. Sect. 2. Vide ſtatutes de 4. E. 3. c. 14. & 36. E. 3. c. 10.

There have been in the time of and ſince the Conqueſt, in the reigns of H. 1. King Stephen, H. 2. R. 1. King John, H. 3. &c 280. Seſſions of Parliament, and at every Seſſion divers Acts of Parliament made, no ſmall number whereof are not in Print. Mir. ca. 2. ſect. 47. 10. 14. c. 4. de defaults, & cap. de Homicide cap. 1. ſect. 13. c. 4. de Poyns.

The juriſdiction of this Court is ſo tranſcendent, that it maketh, inlargeth, diminiſheth, abrogateth, repealeth, and reviveth Laws, Statutes, Acts and Ordinances concerning matters Eccleſiaſtical, Capital, Criminal, Common, Civil, Martial, Maritime, and the reſt. None can begin, continue, or diſſolve the Parliament but by the Kings Authority. Of which court it is ſaid, (a) Que il eſt de treſgrand honor & Juſtice, de que nul doit imaginer choſe diſhonorable. (b) Habet Rex curiam ſuam in concilio ſuo in Parliamentis ſuis, præſentibus prælatis, comitibus, baronibus, proceribus, & aliis viris peritis, ubi terminatæ ſunt dubitationes judicorum, & novis injuriis emerſis nova conſtituuntur remedia, & unicuique juſtitia prout meruerit retribuetur ibidem. But this properly doth belong to the Juriſdiction of Courts, and therefore this little taſte hereof ſhall ſuffice. Ockam quid cum Ven. Math. Pariſ. 212. 213. (a) Pl. Com. 398. b. Doctor and Stud. ca. 55. fol. 164. (b) Fleta lib. 2. ca. 2. Forteſcue de laudibus legum Angliæ. Bracton lib. 1. c. 2.

Sect. 165.

¶ *Cuſtoms & uſages.* Conſuetudo, is one of the main triangles of the Laws of England, thoſe Laws being diviſed into Common Law, Statute Law, and Cuſtom. Of which it is ſaid, * that Conſuetudo quandoque pro lege ſervatur, in partibus ubi fuerit more utentium approbata, & vicem legis obtinet, longævi enim temporis uſus & conſuetudinis non eſt vilis authoritas. (c) Longa poſſeſſio (ſicut jus) parit jus poſſidendi, & tollit actionem vero domino.

(*) Bract. l. 1. c. 3. fol. 2.

(c) Idem lib. 3. fol. 52.

Of every cuſtom there be two eſſential parts, Time and Uſage, Time out of mind (as ſhall be ſaid hereafter) and continual and peaceable uſage without lawful interruption.

¶ *Item, ꝑ l' greinder part tielx burghes ont divers cuſtomes & uſages que nont pas auters villes.* It is neceſſary to be known what cuſtoms may be alledged in an upland Town, which is neither in City nor Borough. * In an upland Town, that is neither in City nor Borough, ſuch a cuſtom to deviſe Lands cannot be alledged. Neither in an upland Town can there be a cuſtom of Borough-Engliſh or Gavelkind, but theſe are cuſtoms which may be in Cities or Boroughs. (d) Alſo if Lands be within a Mannor, Fee, or Seigniory, the ſame by the cuſtom of the Mannor, Fee, or Seigniory, may be deviſable, or of the nature of Gavelkinde or Borough-Engliſh. * But an upland Town may alledge a cuſtom to have a way to their Church, or to make By-laws for the reparations of the Church, the well ordering of the Commons, and ſuch like things. And it is to be obſerved, that in ſpecial caſes a cuſtom may be (e) alledged within a Hamlet, a Town, a Burgh, a City, a Mannor, an Honor, an Hundred, and a County: but a cuſtom cannot be alledged generally within the Kingdom of England, for that is the Common Law.

(*) 44. E. 3. 33. 40. Aſſ. 4. 27. 41. 21. E. 4. 54. 43. E. 3. 32.

(d) 21. E. 4. 53. 54.

(*) 21. E. 4. 54. 15. E. 4. 29. 11. H. 7. 14. 44. E. 3. 18. 21. H. 7. 40.

(e) Bract. lib. 4. 271. 34. E. 1. detinue 60. 17. E. 2. detinue 58. 3. E. 3. det. 156. 30. E. 3. 25. 39 E. 3. 6. 9. 10. 31. E. 3. render 6. 17. E. 3. 27. 21. E. 4. 28. 22. E. 4. 8. 7. E. 3. 51. 30. E. 3. 23. 34. H. 8. Dier 54. F. N. B. 122. 5. E. 3. treſp. 83.

¶ *Le puiſne fits inheritera.* And yet by ſome cuſtoms the youngeſt brother ſhall inherit; for, Conſuetudo loci eſt obſervanda.

¶ *Touts les terres ou tenements:* Either in fee ſimple, fee tail, or any other inheritance. If Lands in the nature of Borough-Engliſh be letten to a man and his Heirs during the life of I. S. and the Leſſee dieth, the youngeſt Son ſhall enjoy it.

¶ *Borough Engliſh:* So called, becauſe this cuſtom was firſt (as ſome hold) in England.

Vide Glanvil l. 7. c. 3. 9.

Sect. 166.

¶ *Item, en aſcun burghes pur le cuſtome feme avera pur ſa dower touts les tenements q̄ fueront a ſa baron, &c.*

¶ And this is called Frank banke, Francus bancus. Conſuetudo eſt in partibus illis, quod uxores maritorum defunctorum habeant francum bancum ſuum de terris Sockmannorum tenent' nomine dotis.

Bract. l. 4. tract. 6. c. 13. F. N. B. 150. o. Pl. Com. 413.

ALſo for the greater part ſuch Boroughs have divers cuſtomes and uſages, which be not had in other Towns, for ſome Boroughs have ſuch a cuſtome, that if a man have iſſue many Sons and dieth, the youngeſt Son ſhall inherit all the tenements which were his Fathers within the ſame Borough as Heir unto his Father, by force of the cuſtom, the which is called Borough Engliſh.

ALſo in ſome Boroughs by cuſtom, the Wife ſhall have for her Dower all the Tenements which were her husbands.

¶ *Qui*

¶ *Que facront a ſa baron, &c.* Here is implied by (&c.) that in ſome places the wife ſhall have the moiety of the Lands of her Husband ſo long as ſhe lives unmarried, as in Gavelkinde. And of Lands in Gavelkinde a man ſhall be Tenant by the curteſie without having of any iſſue. In ſome places the Widow ſhall have the whole, or half, Dum ſola & caſta vixerit, and the like.. (l) F. N. B. 150. 10. E. 3. aide 129.

Sect. 167.

¶ Item; en aſcuns burghes per le cuſtome hõe poit deviſer per ſon teſtament ſes terres & tenements que il ad en fee ſimple deins meſme le burgh al temps de ſ̃ mozant, & per force de tiel deviſe, celuy a que tiel deviſe eſt fait, apres le mozt le deviſor poit entrer ẽ les tenements iſſint a luy deviſes, a aver & tener a luy ſolonque la fozme & effect del deviſe, ſans aſcun liverie de ſeiſin deſtre fait a luy, &c.

ALſo in ſome Boroughs by the cuſtom, a man may deviſe by his Teſtament his Lands and Tenements which he hath in Fee ſimple within the ſame Borough at the time of his Death, and by force of ſuch deviſe, he to whom ſuch deviſe is made after the Death of the Deviſor, may enter into the Tenements ſo to him deviſed, to have and to hold to him after the form and effect of the deviſe, without any livery of ſeiſin thereof to be made to him, &c.

¶ *Deviſer.* This is a French word, and ſignifieth ſermocinari to ſpeak, for teſtamentum eſt teſtatio mentis, & index animi ſermo. So as a deviſer per ſon teſtament, is to ſpeak by his Teſtament what his mind is to have done after his deceaſe.

¶ *Per ſon teſtament.* Teſtamentum eſt (m) duplex 1. In ſcriptis. 2. Nuncupativum, ſeu ſine ſcriptis. And in ſome Cities and Boroughs Lands may (n) paſs as chattels by Will nuncupative or parol without writing. Revera (o) terminatum eſt quod poteſt legari ut catallum tam hæreditas quam perquiſitum per Barones London, & Burgenſes Oxon. ideo verum eſt quod in Burgis non jacet aſſiſa mortis anteceſſoris. But in law moſt commonly, Ultima voluntas in ſcriptis, is uſed where Lands or Tenements are deviſed, and teſtamentum when it concerneth chattels. (m) Vide Sect. 586. (n) Britton f. 164. 212. b. (o) Bract. l. 4. fol. 272. Fleta lib. 5. cap. 5. & l. 2. cap. 50.

¶ *Ses terres ou tenements.* And by the ſame Cuſtom he may deviſe a Rent out of the ſame Lands and Tenements. 4. E. 3. 53. 7. H. 6. 1. 14. H. 8. 5. 22. Aſſ. 78. Abbr. Aſſ. 118. b.

¶ *Que il ad en fee ſimple.* For Lands in tail are not deviſable by Will, and therefore be in this place neceſſarily added (que il ad en fee ſimple) and purpoſely omitted the ſame in the clauſe concerning Borough English, becauſe there an eſtate tail is included. 4. E. 2. mordanc. 39. 49. E. 3. 17. F. N. B. 196. 21. H. 6. 38. a. 7. E. 2. ti. mordanc.

¶ *Poet entrer.* Note, the cuſtom of a City or Borough concerning the deviſe of Lands is, Quod liceat unicuique civi five burgenſi, &c. ejuſdem civitatis ſivi burgi tenementa ſua in eadem civitate ſive burgo in teſtamento ſuo in ultima voluntate ſua, tanquam catalla ſua legare cuicunque voluerit, &c. (p) Now if a man deviſeth either by ſpecial name or generally, goods or chattels real or perſonal, and dieth, the deviſee cannot take them without the aſſent of the Executors. But when a man is ſeiſed of Lands in fee, and deviſeth the ſame in fee, in tail, for life, or for years, the deviſee ſhall enter, for in that caſe the Executors have no medling therewith. And in the caſe of a deviſe by Will of Lands, whereof the deviſor is ſeiſed in fee, the freehold or intereſt in Law is in (q) the deviſee before he doth enter, and in that caſe nothing (r) (having regard to the eſtate or intereſt deviſed) deſcendeth to the heir. But if the heir of the deviſor entreth, and holdeth the deviſee out, he may either enter as Littleton here ſaith, or have his Writ called ex gravi querela, and this Writ (without any particular uſage) is incident to the cuſtom to deviſe; for other wiſe, if a deſcent were caſt before the Deviſee did enter, the Deviſee ſhould have no remedy. After an actual poſſeſſion this Writ lieth not, for then the Deviſee may have his ordinary remedy by the Common Law. F. N. B. 199. Regiſt. in ex gravi Querela. (p) 2. H. 6. 16. 27. H. 6. 8. 2. E. 4. 13. 21. E. 4. 21. 4. H. 7. 16. (q) 2. Mar. Br. tit. dev. 49 (r) Regiſt. fol. 244. 39. Aſſ. pl. 6. 3. E. 3. deviſ. 12. 29. Aſſ. 31. 34. E. 3. tit. formdon. Pl. poſtr. 30. H. 8. deviſe 23. F. N. B. 198. 199. &c. Britton fol. 212. b.

And

And well ſaid Littleton, that Lands and Tenements were deviſable in Burghes by cuſtom, for that (f) at the Common Law no Lands or Tenements were deviſable by any laſt Will and Teſtament, nor ought to be tranſferred from one to another, but by ſolemnity-ſeiſin, matter of record, or ſufficient writing, but as Littleton here ſaith, that by certain private cuſtoms in ſome Burghes they are deviſable. But now ſince Littleton wrote, by the Statutes of 32. and 34. H. 8. Lands and Tenements are generally deviſable by the laſt Will in writing of the Tenant in fee ſimple, whereby the ancient (r) common Law is altered, whereupon many difficult queſtions, and moſt commonly diſperſion of heirs (when the Deviſors are pinched by the meſſengers of death) do ariſe and happen. But (u) theſe Statutes take not away the cuſtom to deviſe, whereof Littleton ſpeaketh: for though Lands deviſable by cuſtom be holden by Knights Service, yet may the owner deviſe the whole Land by force of the cuſtom, and that ſhall ſtand good againſt the heir for the whole. But the deviſe of Lands holden by Knights Service by force of the Statutes is utterly void for a third, and the ſame ſhall deſcend to the heir. If he hath any Lands holden by Knights Service in Capite, and Lands in Socage, he can deviſe but two parts of the whole, but if he hold Lands by Knights Service of the King, and not in Capite, or of a mean Lord, and hath alſo Lands in Socage, he may deviſe two parts of his land holden by Knights Service, and all his Socage lands. If he holds any land of the King in Capite, and by act executed in his life time he conveyeth any part of his Lands to the uſe of his Wife, or of his Children, or payment of his Debts, though it be with power of revocation, he can deviſe by his Will (x) no more but to make up the Land ſo conveyed two parts of the whole. And if the Lands ſo conveyed amount to two parts or more, then he can deviſe nothing by his Will. But if he hath Land only that is holden in Socage, then he may deviſe by his Will all his Socage Lands; ſo as it is apparent that the benefit of the Lords was more carefully provided for, then the good of the heir. But if a man holding ſome Land of the King by Knights Service in Capite, convey two parts of his Land to the uſe of his Wife for life, now (as hath been ſaid) he can deviſe no part of the reſidue, but yet he may by his Will deviſe the reverſion of the two parts ſo conveyed to his Wife: for the intention of the Act is to give power to diſpoſe two parts entirely.

If the Deviſor leave a full third part of the Land immediately to deſcend in fee ſimple or fail, he may deviſe the other two parts in fee ſimple; if a third part be not left, it ſhall be made up according to the Act. But hereditaments that are not of any yearly value, as bona & catalla felonum & fugitivorum, waifes, eſtrays, and the like, can neither be left to deſcend for any part of the third part, or deviſed as part of the two parts. But yet if ſuch Franchiſes of uncertain value be holden of the King in Capite, they ſhall reſtrain the deviſe of all his Lands and make it void for a third part. So it is if a man hath a reverſion expectant upon an eſtate tail dy. and fruitleſs holden of the King by Knights Service in Capite, yet that ſhall reſtrain him to deviſe but two parts of his lands only. And where the Statute ſpeaks of a remainder, it is to be intended only of ſuch a remainder, as may draw Ward & Mariage by the common Law. As if a reverſion upon a ſtate for life be granted to one for life, the remainder in fee, during the life of the grantee for life it is not within the ſtatute, but if he dieth this is ſuch a remainder, as is within the Statute, although it be dy. & fruitleſs. If a gift in tail or a leaſe for life be made, the remainder in fee, this remainder in fee is not within the Statute. But if a man hath Lands holden by Knights ſervice in Capite in poſſeſſion, reverſion, or remainder, and alſo ſeiſed of Socage Land, and deviſe by his Will all his Lands, and after he ſelleth away the Capite Land, or that Land is recovered from him, the Will is good for the whole Socage Land. The values both of the third part, and the two parts of the Lands ſhall be taken as they happen to be at the time of the death of the Deviſor, for then his Will takes effect.

He that holds by Knights Service in chief deviſeth by his Will a Rent, common, or other profits as ſhall amount to the value of two parts out of all his lands, this Rent iſſueth only out of the two parts, and the third part is free of it. And if he hath lands holden by Knights Service, and not in Capite, he may charge two parts of the Knight Service Land as is aforeſaid, and all his Socage Land, &c. And if he hath only Socage Land, he may by his will charge it at his pleaſure, ſo as the Kings and Lords third part is free, and the heirs two parts charged, and this is only by force of the Statute of 34. H. 8.

If a man make a feoffment in fee of his lands holden by Knights Service to the uſe of ſuch perſon and perſons, and of ſuch eſtate and eſtates, &c. as he ſhall appoint by his Will, in this Caſe by operation of Law, the uſe and ſtate reſts in the Feoffor, and he is ſeiſed of a qualified fee. In this caſe if the Feoffor limit eſtates by his will, by force, and according to his power, there the uſes and eſtates growing out of the feoffment are good for the whole, and the laſt will is but directory. But in that caſe if the feoffor had deviſed the land (as owner thereof) without any reference to the feoffment and power thereby given then taking effect by the Will, it is void for a third part. But if he had formerly conveyed two parts to the uſe of his Wife, &c. and after deviſed the reſidue by his will without any reference to his power by the feoffment

(f) 27. H. 8. cap. 10. Britton f. 212. 78. b. 164. Vide before in this Sect. 32. H. 8. c. 2. 34. H. 8. c. 5.

(r) Vide l. 3. fo. 25. &c. in Butler & Bakers caſe. Lib. 6. fol. 16. & 76. Lib. 8. fol. 84. 85. Lib. 9. 133. Lib. 10. 82. 83. 84. Lib. 11. fol. 24. Lib. 1. fol. 25. a.

(u) Dier 4. & 5. Ph. & Mar. 155. an. 6. Eliz. Daliſon. Paſch. 20. Eliz. between Barber and his wife Plaintife, and William Long Defendant in a Writ of Partition. Bendloes adjudged.

(x) Lib. 6. fol. 17. 18. Sir Edw. Cleres caſe. Lib. 3. fol. 34. b. Butler & Bakers caſe.

Lib. 10. fol. 80. 81. Leon. Loveys caſe.

Leon. Loveys caſe and Butler and Bakers caſe. Ubi ſupra.

Leon. Loveys caſe. Ubi ſupra, fol. 81.

Lib. 8. fol. 84. 85. Sir Richard Peshals caſe. Lib. 3. fol. 33. Butler and Bakers caſe.

Lib. 6. fol. 17. 18. in Sir Edward Cleres caſe.

feoffment, yet this Will ſhall enure to declare the uſe upon the feoffment, becauſe he had no power as owner of the Land to deviſe any part of it. But if the feoffment had been made to the uſe of his laſt Will, although he deviſeth the Land with reference to the feoffment, yet it taketh effect only by the Will, and not by the feoffment. All which and many other points of intricate and abſtruſe learning you ſhall more largely read in my Reports.

¶ *Sauns aſcun liverie de ſeiſin deſte fait a luy, &c.* For in his life time Livery of ſeiſin could not be made, becauſe his Will is ambulatory till his death, and no eſtate paſſeth during his life neither can Livery be made after his deceaſe, for then it cometh too late. 40. Aſſ. 38.

Here (&c.) implieth that the deviſe is good without any Attornement of any Leſſee or Tenant.

Sect. 168.

¶ NOta coment q̄ home ne poit grauter ne doner ſes tenements a ſa feme, durant le coverture, pur ceo que ſa feme & luy ne ſont forſq; un perſon en ley, uncore per tiel cuſtōe il poit deviſer per teſtament ſes tenements a ſa feme, a aver & tener a luy en fee ſimple, ou en fee taile, pur terme de vie, ou pur terme des ans, pur ceo que tiel deviſe ne pziſt effect forſque apres la mozt le deviſoz, car touts deviſes ne pzeignont effect forſq; apres la mozt le deviſoz. Et ſi home fait a divers tempz diverſ teſtaments, & diverſ deviſes, &c. uncore le darrein deviſe & volūt fait p' luy eſtoiera, & lauters ſōt voides.

ALſo though a man may not grant nor give his tenements to his Wife during the coverture, for that his Wife and he be but one perſon in the Law, yet by ſuch cuſtom he may deviſe by his Teſtament his Tenements to his Wife, to have and to hold to her in Fee ſimple, or in Fee taile, or for tearm of life, or years, for that ſuch deviſe taketh no effect, but after the death of the Deviſor. And if a man at divers times make divers Teſtaments, and divers deviſes, &c. yet the laſt Deviſe and Will made by him, ſhall ſtand, and the other are void.

¶ *Home ne poit granter ne doner ſes tenements a ſa feme, &c.* This opinion is (a) clear, for by no conveyance at the Common Law a man could during the coverture either in poſſeſſion, reverſion or remainder, limit an eſtate to his wife. But a man may by his deed covenant with others to ſtand ſeiſed to the uſe of his Wife, or make a Feoffment or other conveyance to the uſe of his Wife, and now the ſtate is executed to ſuch uſes by the Statute (b) of 27. H. 8. for an uſe is but a truſt and confidence, which by ſuch a mean might be limited by the husband to the Wife. But a man cannot covenant with his Wife to ſtand ſeiſed to her uſe, becauſe he cannot covenant with her for the reaſon that Littleton here yieldeth. (a) 4. H. 7. (b) 27. H. 8. cap. 10.

¶ *Durant le coverture.* That is, during the continuance of the Mariage. For to cover in Engliſh is Tegere in Latin, and is ſo called, for that the Wife is ſub poteſtate viri, and ſhe is diſabled to contract with any without the conſent of the husband. (c) Omnia quæ ſunt uxoris ſunt ipſius viri, non habet uxor poteſtatem ſui ſed vir. (c) Bracton lib. 2. c. 25.

¶ *Un perſon en ley.* Vir & uxor ſunt quaſi unica perſona, quia caro una, & ſanguis unus, res licet ſit propria uxoris, vir tamen ejus cuſtos, cum ſit caput mulieris. Idem. l. 5. tract 5. c. 29

If Ceſtey que uſe had deviſed, that his wife ſhould ſell his land, and made her executrix and died, and ſhe took another husband, ſhe might ſell the land to her husband, for ſhe did it in auter droit, and her husband ſhould be in by the deviſor. 10. H. 7. 20.

¶ *Per teſtament.* Teſtamentum is (as is ſaid before) teſtatio mentis, and is favourably to be expounded according to the meaning of the Teſtator. In contractibus benigna, in

in teſtamentis benignior, in reſtitutionibus benigniſſima interpretatio facienda eſt.

(d) 4.E.2.tit.Deviſe 23. (k) 44. Aſſ. p. 36. 44. E.3.33. 18.E.3. 8. (f) Britton 264.

¶ *A ſon feme.* And Littleton himſelf yieldeth the reaſon (d) becauſe the deviſe doth not take effect till after the deceaſe of the deviſor. And in ſome (e) places the cuſtom is general, that he may deviſe any lands, &c. In ſome (f) places Lands only which the Deviſor purchaſed. In ſome place that he may deviſe any eſtate, in ſome places for life only, &c.

But albeit the laſt Will doth not take effect until after his deceaſe, yet if a Feme Covert be ſeiſed of Lands in fee, ſhe cannot deviſe the ſame to her Huſband, becauſe at the making of her Will ſhe had no power being ſub poteſtate viri to deviſe the ſame, and the Law intendeth it ſhould be done in coertion of her Huſband.

8. H. 5. 8. 2. R. 3. 22.

¶ *Divers teſtaments.* For Voluntas teſtatoris eſt ambulatoria uſque ad mortem (as hath been ſaid before) and the later Will doth countermand the firſt. And it is truly ſaid that the firſt grant, and the laſt Will is of greateſt force.

¶ *Divers deviſes, &c.* Here by (&c.) is to be underſtood aſwell deviſes of Chattels real or perſonal, as of freehold and inheritance. Alſo that in one Will where there be diuers deviſes of one thing, the laſt deviſe taketh place. Cum duo inter ſe pugnantia reperiuntur in teſtamento ultimum ratum eſt.

Sect. 169.

¶ *Que ſes executors poient aliener ou vender ſes tenemẽts.* And that which in Littletons time a man might do by cuſtom in ſome particular places, he may now do by the Statutes of 32. & 34 H. 8. generally.

32. H. 8. cap. 2. 34. H. 8. cap. 5.

¶ *Les Executors apres l'mort leur teſtator poient vender.* Here it appeareth, that the executors having but a power, as Littleton putteth the caſe, to ſell, they muſt all join in the ſale. Then put the caſe that one dies, it is regularly true, that being but a bare authority, the ſurviuors cannot ſell: but if a man deviſeth his land to A. for term of life, and that after his deceaſe, his lands ſhall be ſold by his executors generally, (as Littleton here putteth his caſe) and make three or four Executors, and during the life of A. one of the executors dieth, & then A. dieth, the other two or three Executors may ſell, becauſe the land could not be ſold before, and the plural number of his Executors remain. But if they had been named by their names, as by I.S. I.N. I.D. and I.G. his Executors,

49. E. 3. 16. 29. Aſſ. 17. 39. Aſſ. 17. 9. H. 6. 24. 15. H. 7. 12. 21. 14. H. 8. 6. 32. H. 8. tit. Devi. Br. 31. 2. Eliz. Dyer. 177.

¶ Item p tiel cuſtome home poit deviſer per ſon teſtament que ſes Executors poyent aliener & vender ſes tenements que il ad en fee ſimple, p certaine ſumm de money a diſtribuer p ſon alme. En ceſt cas, coment que le deviſor devie ſeiſie de ſes tenements, & ſes tenements diſcẽdont a ſon heire: uncore les executors, apres le mort lour teſtator, poyent vender les tenits iſſint a eux deviſes, & ouſte l'hẽ, & ent fait feoffm̃t, alienation, & eſtate p fait, ou ſans fait a eux a q̃x l'vendõ eſt fait. Et iſſint pois veier icy un cas ou hõe poit faire loial eſtat, & uncore il naveit riens en

ALſo by ſuch cuſtom a man may deviſe by his Teſtament, that his Executors may alien and ſell the Tenements that he hath in Fee ſimple, for a certain ſum to diſtribute for his Soul: In this caſe though the Deviſor die ſeiſed of the Tenements, and the tenements deſcend unto his Heir, yet the Executors after the death of the teſtator may ſell the Tenements ſo deviſed them and put out the Heir, and thereof make a feoffment, alienation, and eſtate by Deed, or without Deed to them to whom the ſale is made. And ſo may ye here ſee a Caſe where a man may make a lawful eſtate,

les Tenements al temps del eſtate fait. Et le cauſe eſt, pur ceo que la cuſtome & uſage ad eſte tiel. Quia conſuetudo ex certa cauſa rationabili uſitata privat communem Legem.

and yet he hath nought in the Tenements at the time of the eſtate made: and the cauſe is, for that the cuſtom and uſage is ſuch. *For a cuſtom uſed upon a certain reaſonable cauſe depriveth the common Law.*

then in that caſe the ſurvivors could not ſell the ſame, becauſe the words of the Teſtator could not be ſatisfied; and I myſelf knew this caſe adjudged *: A ſpecial verdict was found, that A. was ſeiſed of certain lands in fee, and deviſed the ſame in tail, and if the Donee died without iſſue, that his ſaid land ſhould be ſold by his ſons in law, he in truth having five ſons in law, one of his ſons in law died in the life of the Donee, and after the Donee died without iſſue, and then the four of the ſons in law ſold the land, and it was adjudged that the ſale was good, becauſe they were named generally by his ſons in law, and the Lands could not be ſold by them all. And the words of the Will, in a benigne interpretation are ſatisfied in the plural number, albeit they had but a bare authority: but if they had been particularly named, it had been otherwiſe. But if a man deviſeth lands to his Executors to be ſold, and maketh two Executors, and the one dieth, yet the ſurvivor may ſell the land, becauſe as the State, ſo the Truſt ſhall ſurvive; and ſo note the diverſity between a bare truſt, and a truſt coupled with an intereſt. In both theſe caſes the Executors may (a) ſell part of the land at one time, and part at another, as they may find purchaſers.

* Hill. 26. El. inter Vincent and Lee in the Kings Bench.

39. Aſſ. p. 17. 4. Eliz. Dier 210. 23. Eliz. Dier 371. Paſch. 32. Eliz. Ro. 1307. in Communi Banco, and ſo reſolved in Vincents caſe.

In Littletons caſe admit that one Executor had refuſed to ſell, then (as the law ſtood when Littleton wrote) it was clear that the others could not ſell, but now by the Statute (b) of 21. H. 8. it is provided that where lands are willed to be ſold by Executors, that though part of them refuſe, yet the reſidue may ſell. And albeit the letter of the Law extendeth only where Executors have a power to ſell, yet being a beneficial Law, it is by conſtruction extended where lands are deviſed to Executors to be ſold. Yet in neither of thoſe caſes, albeit one refuſe, can the other make ſale to him that refuſed, becauſe he is party and privy to the laſt will, and remains Executor ſtill. My advice to them that make ſuch deviſes by will is, to make it as certain as they can, as that the ſale be made by his Executors, or the Survivors, or Survivor of them, if his meaning be ſo, or by ſuch, or ſo many of them, as take upon them the probate of his Will, or the like. And it is better to give them an authority then an eſtate, unleſs his meaning be they ſhould take the profits of his Lands in the mean time, and then it is neceſſary that he deviſeth, that the mean profits till the ſale ſhall be aſſets in their hands, for otherwiſe they ſhall not be ſo. But hereof thus much ſhall ſuffice.

(a) Lib. 1. fol. 173. in Digges caſe.
(b) 21. H. 8. cap. 4.

¶ *Et cent faire feoffment.* For albeit the Executors in this caſe have no eſtate or intereſt in the land, but only a bare and naked power, yet this Feoffment amounteth to an alienation, to veſt the land in the Feoffee, as it appeareth here, and the Feoffee ſhall be in by the Deviſor.

49. E. 3. 16. 38. Aſſ. 38. 39. Aſſ. 17. 13. E. 3. deviſe 3. 14. H. 8. 10. 15. H. 7. 12. b.

¶ *Per fait ou ſauns fait.* And therefore if by the cuſtom a man deviſeth that a Reverſion or any other thing that lieth in grant ſhall be ſold by the Executors, they may ſell the ſame without Deed, for the Wendee ſhall be in by the Deviſor, and not by the Executors, as hath been ſaid.

19. H. 6.

¶ *Conſuetudo ex certa cauſa rationabili uſitata privat communem legem.* Quia conſuetudo contra rationem introducta potius uſurpatio quam conſuetudo appellari debet. Conſuetudo præſcripta & legitima vincet legem.

¶ *Privat communem legem.* For no cuſtom or preſcription can take away the force of an Act of Parliament, and therefore Littleton materially ſpeaketh here of the Common Law.

4. E. 4. 4. 11. H. 4. 7. 39. H. 6. 39. 7. H. 6. 1. 9. H. 6. 56. 8. H. 7. 4. 8. Eliz. Dier 247.

Sect. 170.

¶ Et nota que nul cuſtome eſt alowable, meſque tiel cuſtome q̄ ad eſte uſe

And note that no cuſtom is to be allowed, but ſuch cuſtom as hath been uſed

¶ *Preſcription.* Preſcription is a title taking his ſubſtance of uſe and time allowed by the Law; Præſcriptio eſt titulus ex uſu & tempore ſubſtantiam capiens

capiens ab authoritate legis. In the common Law a preſcription which is perſonal is for the moſt part applyed to perſons, being made in the name of a certain perſon and of his Anceſtors, or thoſe whoſe eſtate he hath, or in bodies politick or Corporate, and their predeceſſors, for as a natural body is ſaid to have Anceſtors, ſo a body politick or corporate is ſaid to have predeceſſors. And a cuſtom which is local is alledged in no perſon, but laid within ſome Mannor or other place. As taking one example for many, I. S. ſeiſed of the Mannor of D. in fee preſcribeth thus: That I. S. his Anceſtors, and all thoſe whoſe eſtate he hath in the ſaid Mannor, have time out of mind of man had and uſed to have Common of paſture, &c. in ſuch a place &c. being the Land of ſome other, &c. as pertaining to the ſaid Mannor. This property we call a preſcription. A cuſtom is in this manner: A Copyholder of the Mannor of D. doth plead, that within the ſame Mannor, there is and hath been ſuch a cuſtom time out of mind of man uſed, that all the Copyholders of the ſaid Mannor have had and uſed to have common of paſture, &c. in ſuch a waſt of the Lord, patrel of the ſaid Mannor, &c. where the perſon neither doth or can preſcribe, but alledgeth the cuſtom within the Mannor. But both to Cuſtoms and Preſcriptions, theſe two things are incident inſeparable, viz. Poſſeſſion or Uſage: and Time. Poſſeſſion muſt have three qualities; it muſt be long, continual, and peaceable, Longa, continua, & pacifica: for it is ſaid, Transferuntur dominia ſine titulo & traditione, per uſucaptionem, 2. per longam, continuam, & pacificam poſſeſſionem. Longa, 1. per ſpatium temporis per legem definitum: of which hereafter ſhall be ſpoken. Continuam dico ita quod non ſit legitime interrupta

12. E. 4. 1. 2. Mariz, Br. Preſcr. 100.
6. E. 6. Dyer 71. 14. Ed. 3. Bar. 277. 43. E. 3. 32.
7. H. 6. 26. 22. H. 6. 14.
16. E. 2. tit. Preſcript. 53.
45. Aſſ. 8. 40. Aſſ. 27. 41.
21. E. 4. 53, 54.

Bract. fo. 51, 52.

per title de preſcription. ſ. ū temps dont memorie ne curt. Mes divers opinions ont eſte ū temps dont memory, &c. q̄ ū title p̄ preſcription, q̄ eſt tout un en ley. Car aſcuns ont dit que temps de memory ſerra dit de temps de limitation en un briefe de droit, ſcilicet de temps le Roy R. le 1. puis le conqueſt, come eſt done per l' Statute de Weſtminſter 1. pur ceo que le briefe de droit eſt le pluis haut briefe en ſa nature que poit eſtre, & per tiel briefe home poit recover ſont droit de la poſſeſſion ſon Anceſtors de pluis auncient temps que home purroit per aſcun briefe per le ley, &c. Et tantant que il eſt done p̄ le did eſtatute que en briefe de droit nul ſoit oye a demander de le ſeiſin ſon Anceſtors de pluis longe temps q̄ de temps le Roy R. avantdit, iſſint ceo & prove q̄ continuance de poſſeſſion, ou auters cuſtomes & uſages uſes puis le dit temps, eſt le title de preſcriptiō, &c. & hoc certum eſt. Et auters

by title of preſcription, that is to ſay, from time out of mind. But divers opinions have been of time out of mind, &c. and of title of preſcription, which is all one in the Law. For ſome have ſaid, that time of mind ſhould be ſaid from time of limitation in a Writ of Right, that is to ſay, from the time of King *Richard* the firſt after the Conqueſt, as is given by the Statute of Weſtminſter the firſt, for that a Writ of Right is the moſt higheſt Writ in his nature that may be. And by ſuch a Writ a man may recover his Right of the Poſſeſſion of his Anceſtors, of the moſt antient time that any man may by any Writ by the Law, &c. And in ſo much that it is given by the ſaid Eſtatute, that in a Writ of Right none ſhall be heard to demand of the ſeiſin of his Anceſtors of longer time, than of the time of King *Richard* aforeſaid; therefore this is proved, that continuance of poſſeſſion, or other cuſtoms and uſages uſed after the ſame time is the title

ont

ont dit, q̄ bien ꝑ verity eſt que ſeiſin & continuance puis le dit limitatiō, eſt un title de preſcription, come eſt avant dit, & per cauſe avandit. Mes ils ont dit, que il y auxy un auter title ō preſcriptiō, que fuit a la common ley devant aſcun eſtatute de limitation de briefe, &c. & ceo fuit lou un cuſtome, ou un uſage, ou auter choſe ad eſte uſe de temps dont memorie des homes ne curt a le contrarie. Et ils ont dit, que il eſt prove per l' pleder, lou hō voit pleder un title de preſcription ō cuſtome il dirra q̄ tiel cuſtome ad eſte uſe, de tempore cujus contrarium memoria hominum non exiſtit, & ſ eſt autant a dire quāt tiel matter eſt pleō, q̄ nul home adonq; en vie ad oye aſcun proofe a l' contrary, ne avoit aſcun conuſans a l' contrary. Et entāt que tiel title de preſcriptiō fuit a le common ley, & vient ouſte p aſcun eſtatute, ergo, il demurt come il fuit a le common ley, & le pluis toſt, entant que la dit limitation de briefe ō droit eſt de cy long tēps paſſe, Ideo

of preſcription, and this is certain. And others have ſaid, that well and truth it is, that ſeiſin and continuance after the limitation, &c. is a title of preſcription, as is aforeſaid, and by the cauſe aforeſaid. But they have ſaid that there is alſo another title of preſcription that was at the Common law, before any eſtatute of limitation of writs, &c. And that it was where a cuſtom or uſage, or other thing hath been uſed, for time whereof mind of man runneth not to the contrary. And they have ſaid that this is proved bythe pleading: where a man will plead a title of preſcription of cuſtom he ſhall ſay that ſuch cuſtom hath been uſed from time whereof the memory of men runneth not to the contrary, that is as much to ſay, when ſuch a matter is pleaded, that no man then alive hath heard any proof of the contrary, nor hath no knowledg to the contrary, and inſomuch that ſuch title of preſcription was at the Common Law, and not put out by an eſtatute, *ergo*, it abideth as it was at the common law, & the rather, inſomuch that the ſaid limitation of a Writ of Right, is of ſo long time paſſed, *Ideo quære de hoc.* And

Pacificam dico, quia ſi contentioſa fuerit, idem erit quod prius, ſi contentio fuerit juſta. Ut ſi verus Dominus ſtatim cum intruſor vel diſſeiſor ingreſſus fuerit ſeiſinam, nitatur tales viribus repellere, & expellere, licet id quod inceperit perducere non poſſit ad effectum, dum tamen cum effecerit diligens ſit ad impetrandum & proſequendum. Longus uſus nec per vim, nec clam, nec precario, &c. Idem fol. 222. b.

If a man preſcribeth to habe a rent, and likewiſe to take a Diſtreſs for the ſame, it cannot be avoided by pleading, that the rent hath been always paid by coherſion, albeit it began by wrong. 13. E. 4. 6.

¶ *Un title de preſcription.* Seeing that preſcription maketh a title, it is to be ſeen, firſt to what things a man may make a title by preſcription without charter. And ſecondly, how it may be loſt by interruption.

For the firſt, as to ſuch franchiſes and liberties as cannot be ſeiſed as forfeited, before the cauſe of forfeiture appear of Record, no man can make a title by preſcription, becauſe that preſcription being but an uſage in pais, cannot extend to ſuch things as cannot be ſeiſed nor had without matter of Record: as to the goods and chattels of Traitors, Felons, Felons of themſelves, Fugitives, of thoſe that be put in exigent, Deodands, Conuſance of pleas, to make a Corporation, to habe a Sanctuary, to make a Coine- 21. H. 6. Preſcrip. 44. 21. E. 4. 6. 1. H 7. 23. 9. H. 7. 11. 20. 7. H 6. 45. 6. E. 3. 32 42 45 E. 3. 2. 2. E. 4. 26. (*) Fleta lib. 1. cap. 25. Brit. f 6. & 15. 44 all. p. 8 49. E. 3. 3. Stamf. Pl. Cor. 81. 51. lib. 5. ful. 109, 110 Lib. 9. fol. 29.

ner, &c. to make Conſervators of the peace, &c.

de hoc quære. **Et pluſors** many other cuſtoms **auters cuſtomes & uſages** and uſages have ſuch **ont tiels auncient burges.** antient Boroughs.

(e) 22. E. 3. Coron 241. 9. H. 7 11. 20. 18. H. 6 preſcr. 45. 11. H. 4. 10. 21. H. 7. 33. 9. E. 4. 12. 39. E. 3. 35. 46. E. 3. 16. 11. H. 6. 25. F. N. B. 91. I. H. 7. 24. Staſf. Pl. Cor. 38. 44. E. 3. 4. 22. E. 4. 43. 44. 3. E. 3. Brook preſc. 57. 44. Aſſ. pl. (*) 8. H. 6. 16. (f) 12. E. 4. 16. 32. H. 6. 25 12. Eliz. Dier. 288. 289. 11. E. 3. tit. iſſue 40.

(e) But to Treaſure, Troue, Waiſes, Eſtraies, Wreth of Sea, to hold Pleas, Courts of Leets, Hundreds, &c. Infange thief, Outfange thief, to have a Park, Warren, Royal Fiſhes, as Whales, Sturgions, &c. Faires, Markets, Frank foldage, the keeping of a Gaol, Toll, a Corporation by preſcription, and the like, a man may make a Title by uſage and preſcription only without any matter of record, (*) Vide Sect. 310. where a man ſhall make a Title to Lands by preſcription.

But it is to be obſerved (f) that although a man cannot as is aforeſaid preſcribe in the ſaid Franchiſe to have Bona & catalla proditorum, felonum, &c. yet may they and the like be had obliquely, or by a mean by preſcription: for a County Palatine may be claimed by preſcription, and by reaſon thereof to have Bona & catalla proditorum, felonum, &c.

As to the ſecond, by what means a Title by preſcription, or cuſtom may be loſt by interruption: It is to be known that the Title being once gained by preſcription or cuſtom, cannot be loſt by interruption of the poſſeſſion for 10 or 20 years, but by interruption in the right, as if a man have had a Rent or Common by preſcription, unity of poſſeſſion of as high and perdurable eſtate is an interruption in the right.

15. E. 3. tit. judgm. 133. 14. E. 3. ibid. 155.

In a Writ of Meſne the Plaintife made his title by preſcription, that the Defendant and his Anceſtors had acquitted the Plaintife and his Anceſtors, & the Terre-tenant time out of mind, &c. the Defendant took iſſue, that the Defendant and his Anceſtors had not acquitted the Plaintife and his Anceſtors, and the Terre-tenant, and the Jury gave a ſpecial verdict, that the Grandfather of the Plaintif was enfeoffed by one Agnes, and that Agnes and her Anceſtors were acquitted by the Anceſtors of the Defendant time out of mind before that time, ſince which time no acquital had been, and it was adjudged and affirmed in a Writ of error, that the Plaintife ſhould recover his acquital, for that there was once a title by preſcription beſſed, which cannot be taken away by a wrongful Ceſſet to acquite of late time, and albeit the verdict had found againſt the letter of the iſſue, yet for that the ſubſtance of the iſſue was found, viz. a ſufficient title by preſcription, it was adjudged both by the Court of Common Pleas, and in the Writ of Error by the Court of Kings Bench for the Plaintife, which is worthy of obſervation. So a modus decimandi was alledged (*) by preſcription time out of mind for tithes of Lambs, and thereupon iſſue joyned, and the Jury found that before 20 years then laſt paſt there was ſuch a preſcription, and that for theſe 20 years, he had paid tithe Lamb in Specie, and it was objected firſt that the iſſue was found againſt the Plaintife, for that the preſcription was general for all the time of preſcription, and 20 years fail thereof. 2. That the party by payment of Tithes in Specie had waived the preſcription or cuſtom. But it was adjudged for the Plaintife in the prohibition; for albeit the Modus decimandi had not been paid by the ſpace of 20 years, yet the preſcription being found, the ſubſtance of the iſſue is found for the Plaintife. And if a man hath a Common by preſcription, and taketh a Leaſe of the Land for 20 years, whereby the Common is ſuſpended, after the years ended, he may claim the Common generally by preſcription, for that the ſuſpenſion was but to the poſſeſſion, and not to the right, and the inheritance of the Common did always remain, and when a preſcription or cuſtom doth make a title of Inheritance (as Littleton ſpeaketh) the party cannot alter or waive the ſame in pais.

(*) Mich 43. & 44. El. in a prohibition between Nowel pl. and Hicks Vicar of Edmonton defendant in the Kings Bench

¶ *Temps dont memory, &c. & de title per preſcription que eſt tout un ley.* So as the time preſcribed or deſined by Law, is time, whereof there is no memory of man to the contrary. (e) Omnis querela, & omnis actio in juriarum limitata infra certa tempora.

(e) Bracton fol. 314.

¶ *Temps de limitation.* Limitation as it is taken in Law is a certain time preſcribed by Statute, within the which the Demandant in the action muſt prove himſelf or ſome of his Anceſtors to be ſeiſed.

(f) Regiſt. 158. Brad. fol. 373 5. Aſſ. p. 2. 34. H. 6. 40. (g) Stat. de Mert. 20. H. 3. c. 8. (h) Weſt. 1. 2. 3 E. 1. c. 38 Vide W. 2. 13. E. 1. c. 46. (i) Mirror c. 5. ſect. 1.

¶ *En breefe de droit.* In (f) antient time the limitation in a Writ of Right was from the time of H. 1. whereof it was ſaid, a tempore Regis Henrici ſenioris. After that by the Statute of (g) Merton the limitation was from the time of H. 2. and by the Statute (h) of W. 1. the limitation was from the time of R. 1. But this is that limitation that Littleton here ſpeaketh of. Whereof in the Mirror in reproof of the Law it is thus ſaid, (i) Abuſion eſt de counter cy longe temps dount nul ne poet teſmoigner de vein & de oyer que ne dure my generalment ouſter 40. ans.

Time

Time of limitation is two-fold. Firſt, in Writs, and that is by divers Acts of Parliament. Secondly, To make a title to any Inheritance, and that (as Littleton here ſaith) is by the Common Law. Glanvil. l. 13. c. 3. & 34. Mirror c. 5. ſect. 4. Fleta l. 2. c. 38. & l. 4. c. 5. Britton fol. 79. 82.

Limitation of times in Writs are provided by the ſaid Statute of Merton, and after by the ſaid Statute of W. 1. which Littleton here citeth, and which was in force when he wrote, but is ſince altered by a profitable and neceſſary Statute (k) made Anno 32. H. 8. and by that Act, the former limitation of time in a Writ of Right is changed and reduced to threeſcore years next before the Teſte of the Writ, and ſo of other actions, as by the Statute at large appeareth. But it is to be obſerved, that this Act of 32. H. 8. extendeth (l) not to a Formedon, in the Diſcender, nor to the Services of Eſcuage, Homage, and Fealty; for a man may live above the time limited by the Act, neither doth it extend to any other ſervice, which by common poſſibility may not happen or become due within fifty years, as to cover the Hall of the Lord, or to attend on his Lord when he goeth to War or the like, nor where the ſeiſin is not traverſable or iſſuable, neither doth it extend to a Rent created by Deed, nor to a Rent reſerved upon any particular eſtate, for (m) in the one caſe the Deed is the title, and in the other the reſervation, nor to any Writ of Right of Advowſon, Quare impedit, or Aſſiſe of Darreine preſentment (for there was a Parſon of one of my Churches that had been incumbent there above fifty years, and died but lately) or any Writ of Right of Ward, or raviſhment of Ward, &c. but they are left as they were before the Statute of 32. H. 8. But hereof thus much for the better underſtanding of Littleton ſhall ſuffice. (k) 32. H. 8. c. 2. See the ſecond part of the Inſtitutes, Mert. c. 8. (l) Mich 10. & 11. Eliz. Dyer 278. Fitzwilliams caſe. Lib. 4. fol. 10. & 11. Bevils caſe. (m) Lib. 8. fol. 65. Sir Will. Foſters caſe. 1. Mar. Parliam. 2. c. 5. Vide 17. E. 3. 11. Pl. Com. 371. b.

¶ *De temps le Roy R.* 1. And that was intended from the firſt day of his Reign, for (from the time) being indefinitely, doth include the whole time of his Reign, which is to be obſerved. Vide 34. H. 6. 36.

¶ *Briefe de droit.* Breve de recto, a Writ of Right, ſo called, for that the words in the Writ of Right are, Quod ſine dilatione plenum rectum teneas.

¶ *Title de preſcription al common ley, &c. de temps dont memorie des homes ne curge al contrarie.* Docere oportet longum tempus, & longum uſum illum, viz. qui excedit memoriam hominum, tale enim tempus ſufficit pro jure. Bract. l. 4. fol. 230. Fleta l. 4. c. 24.

¶ *Aſcun proofe al contrarie,* for if there be any ſufficient proof of Record or writing to the contrary, albeit it exceed the memory or proper knowledge of any man living, yet is it within the memory of man: for memory or knowledge is two-fold. Firſt, by knowledge by proof, as by Record or ſufficient matter of writing. Secondly, by his own proper knowledge. A Record or ſufficient matter in writing are good memorials; for Litera ſcripta manet. And therefore it is ſaid, when we will by any Record or writing commit the memory of any thing to poſterity, it is ſaid tradere memoriæ. And this is the reaſon that regularly a man cannot preſcribe or alledge a Cuſtom againſt a Statute, becauſe that is matter of Record, and is the higheſt proof and matter of Record in Law. But yet a man may preſcribe againſt an Act of Parliament, when his Preſcription or Cuſtom is ſaved or preſerved by another Act of Parliament. 28. Aſſ. 25. 38. Aſſ. 18. 45. E. 3. 26. 5. H. 7. 10. 8. H. 7 7. 11. H. 7. 21. Dyer 23. Eliz. 273.

There is alſo a diverſity between an Act of Parliament in the negative and in the affirmative, for an affirmative Act doth not take away a Cuſtom as the Statutes of Wills of 32 and 34 H. 8. do not take away a Cuſtom to deviſe Lands, as it hath often been adjudged. Moreover, there is a diverſity between Statutes that be in the negative; for if a Statute in the negative be declarative of the antient Law, that is in affirmance of the Common Law, there as well as a man may preſcribe or alledge a Cuſtom againſt the Common Law, ſo a man may do againſt ſuch a Statute: for as our Author ſaith, Conſuetudo, &c. privat communem legem. As the Statute of Magna Charta provideth, that no Leet ſhall be holden but twice in the year, yet a man may preſcribe to hold it oftner, and at other times, for that the Statute (n) was but in affirmance of the Common Law. Magna Charta, c. 35. (n) 6. H. 7. 2. 8. H. 4. 34. 12. H. 7. 18. 31. H. 6. leet. 11. 18. H. 6. 13.

So the Statute (o) of 34. E. 1. provideth that none ſhall cut down any trees of his own within a Foreſt without the view of the Foreſter; but likewiſe as this Act is in affirmance of the Common Law, a man may preſcribe to cut down his Woods within a Foreſt without the view of the Foreſter. And ſo was it adjudged in 15. Eliz. in the Exchequer by Sir Edward Saunders Chief Baron, and other the Barons of the Exchequer, as Sir John Popham Chief Juſtice of the Kings Bench reported to me. (o) 34. E. 1. tit. for. Raſt. 1. E. 3. c. 2.

In the Eire of the Foreſt of Pickering before Willoughby, Hungerford and Hanbury, Juſtices Itinerants there, Anno 8. E. 3. I read (p) a claim made by Henry de Percy, Lord of the Mannor of Semor within the ſaid Foreſt, the Foreſters, Verderours, and Regarders found his claim to be true, viz. Quod prædictus Henricus de Percy, & omnes antecceſſores ſui tenentes manerium prædictum a tempore quo non extat memoria & ſine interruptione aliquali tenuerunt prædictum manerium cum pertinentiis extra regardum Foreſtæ, & habuerunt Woodwardum portarum (p) Itin. Pickering. an. 8. E. 3. Rot. 38.

arcum

arcum & ſagittas ad præſentandum præſentanda de venatione tantum, &c. & habuerunt in boſcis ſuis de Semere forgeas & mineras, & amputârunt, dederunt, & vendiderunt boſcum ſuum infra manerium prædictum ſine viſu foreſtariorum pro voluntate ſua, & fugarunt & ceperunt Vulpes, Lepores, Capriolos, &c. ſicut idem Henricus Percy ſuperius clamat. Which claim by preſcription, and found as is aforeſaid, the Juſtices doubted only of two points. The firſt, foraſmuch as the ſaid Manor was within the limits of the Foreſt, it ſhould not only be Contra aſſiſam Foreſtæ, for his Woodward to bear Bow and Arrows; where by Law he ought to bear but an Hatchet, and no Bow nor Arrows within the Foreſt, but alſo de facili cedere poſſit in deſtructionem ferarum, &c. and therefore doubted whether it might be claimed by preſcription. Their ſecond doubt was concerning fugationem, & captionem Capriolorum in boſcis ſuis prædictis, eo quod eſt beſtia venationis Foreſtæ, & tranſgreſſores inde convicti finem facerent ut pro tranſgreſſione venationis, and for that difficulty, the claim was adjourned into the Kings Bench. But of the other parts of the Preſcription no doubt at all was made: and the like had been allowed in the ſame Eire, as in the caſe of Thomas Lord Wake of Lydell, and of Gilbert of Acton, in the ſame Eire, Rot. 37. and of others.

¶ *Il eſt prove per le pleader.* Note one of the beſt arguments or proofs in Law is drawn from the right entries or courſe of pleading, for the Law it ſelf ſpeaketh by good pleading, and therefore Littleton here ſaith, It is proved by the pleading, &c. as if pleading were ipſius legis viva vox.

Entant que tiel title per preſcription fuit al common ley, &c. Note all the Preſcriptions that were limited from a certain time were by Act of Parliament, as from the time of H. 1. which was the firſt time of limitation ſet down by any Act of Parliament, and ſo from the Reign of R. 1. &c. But this preſcription of time out of memory of man was (as Littleton here ſaith) at the Common Law, and limited to no time. Alſo here is implied a maxim of the Law, viz. That whatſoever was at the Common Law, and is not ouſted or taken away by any Statute remaineth ſtill.

¶ *Common ley.* The Law of England is divided, as hath been ſaid before, into three parts; the Common Law, which is the moſt general and antient Law of the Realm; of part whereof Littleton wrote; 2 Statutes or Acts of Parliament, and 3 particular Cuſtoms (whereof Littleton alſo maketh ſome mention) I ſay particular, for if it be the general Cuſtom of the Realm, it is part of the Common Law

The Common Law hath no controuler in any part of it; but the High Court of Parliament, and if it be not abrogated or altered by Parliament, it remains ſtill, as Littleton here ſaith, The Common Law appeareth in the Statute of Magna Charta and other antient Statutes (which for the moſt part are affirmations of the Common Law) in the original Writs, in judicial Records, and in our Books of terms and years. Acts of Parliament appear in the Rolls of Parliament, and for the moſt part are in print. Particular Cuſtoms are to be proved.

Sect. 171.

¶ *Ville.* Villa quaſi vehilla quod in eam convehantur fructus. And it is called Vicus, becauſe it is prope viam. Villa eſt ex pluribus manſionibus vicinata & collata ex pluribus vicinis. If a Town be decayed ſo as no houſes remain, yet it is a Town in Law. And ſo if a Borough be decayed, yet ſhall it ſend Burgeſſes to the Parliament, as old Salisbury and others do. It cannot be a Town in Law, unleſs it hath, or in time paſt hath had a Church, and celebration of Divine Service, Sacraments, and Burials: What alteration hath been made in Towns, hear what a great Lawyer ſaith, In Anglia Villula tam parva inveniri non poterit, in qua non eſt Miles, A miger, vel Paterfamilias, &c. magnis dicatus poſſeſſionibus, nec non liberi tenentes alii & valeti plurimis ſuis patrimoniis ſufficientes, &c. And it appeareth by Littleton, that a Town is the genus, and a Borough is the ſpecies; for he ſaith that every Borough is a Town, but every Town is not a Borough. Et ſub appellatione Villarum continentur Burgi & Civitates.

Item, cheſcun Burgh eſt un ville, mes nemy è converſo. Plus ſerra dit de cuſtome en le tenure de villenage.

Also every Borough is a Town, but not *è converſo*: more ſhall be ſaid of cuſtom in the tenure of villenage.

Vid. Linw. verbo vicus. Bract. lib. 5. fol. 434. & lib. 4. fol. 211. Forteſcue cap. 29. 7. E. 6. fines levy de terre Bract. 91.

34. H. 1. quare Imp. 187.

Forteſcue cap. 29.

Forteſcue cap. 24.

Berewica, or Berewit in Domeſday ſignifieth a Town, Hæ Berewicæ pertinent ad Berchley. (Et ſic recitat plus quam viginti villas.) Domeſday. Glouc.

There be in England and Wales eight thouſand, eight hundred and three Towns, or thereabouts.

See more De villis parochiis & hamlettis, in the antient Authors of the Law, and plentifully in our other Books. But let us now hear what Littleton ſaith. Bract. ubi ſupr. Flet. l. 4. c. 15. & lib. 6. c. 49. Britt. fo. 124. & 274, &c.

Chap. 11. Villenage. *Sect.* 172.

¶ Tenure en Villenage eſt plus proprement quant un villein tient de ſon Sir, a que il eſt villein, certaine terres ou tenemẽts ſolonq; l'cuſtome del manor, ou autrement a la volunt ſon Seignior, & de faire a ſon ſeignior villein ſervice: Come de porter & de carier le fime le Sir hors del City ou del Manor ſon Seignior ieſques a l'terr ſon Seignior, en giſant ceo ſur le terre, & huiuſmodi. Et aſcuns franke homes teignont lour tenements ſolonq; le cuſtome del certaine manors per tiels ſervices. Et lour tenure auxy eſt appel Tenure en Villenage, & uncore ils ne ſont pas villeines: Car nul fre tenus en Villenage, ou villeine terre, ne aſcun cuſtome ſurdant de la fre, ne unques ſerra

Tenure in villenage is moſt properly when a Villein holdeth of his Lord, to whom he is a Villein, certain Lands or Tenements according to the Cuſtom of the Mannor, or otherwiſe at the will of his Lord, and to do to his Lord villein ſervice: as to carry and recarry the dung of his Lord out of the City, or out of his Lords Mannor, unto the Land of his Lord, and to ſpread the ſame upon the Land, and ſuch like. And ſome free men hold their Tenements according to the cuſtom of certain Mannors by ſuch Services. And their tenure alſo is called Tenure in villenage, and yet they are not Villeins. For no land holden in villenage or villein land, nor any cuſtom ariſing out of the Land ſhall ever make a free man villein, but a

¶ *Tenure en villenage.* Villeine is the French word Villaine, and that A villa, quia villæ adſcriptus eſt, for they which are now called Villani of antient times were called Adſcripcitii, and in the Common Law he is called Nativus, quia pro majore parte natus eſt ſervus, and this is he which the Civilians call ſervus. (a) Theyn in the Saxon Tongue is Liber, and Then ſervus. Theme (ſometimes written Theame corruptly) is an old Saxon word, and ſignifieth Poteſtatem habendi in nativos ſive villanos cum eorum ſequelis, terris, bonis & catallis. But Teame ſometime corruptly written Theam is of another ſignification, for it is alſo an old Saxon word, (b) and ſignifieth where a man cannot produce his warrant of that which he bought according to his Voucher. Lib. Rub. 76. & 77. Glanv. l. 5. c. 1. & 2. &c. Vide Bract. l. 1. c. 6. &c. Brit. f. 77. & 67. 82. 97. 98 125. 126. 147. Fle. l. 1. c. 3 Flet. l. 2. c. 44. Idem l. 4. cap. 11. & 12. Mir. c. 2. Sect. 18. Ockam

(a) Flet. l. 1. c. 24.

(b) Vide Lamb. inter Leges Sancti Edw. fo. 132. numb. 25.

¶ *Villenage.* Villenagium, (as in like caſes hath been ſaid when the termination is in age) is the Service of a bondman. And yet a free man may do the Service of him that is bond. And therefore a tenure in Villenage is two-fold, one where the perſon of the Tenant is bond, and the tenure ſervile, the other where the perſon is free, and the tenure ſervile. (c) Serva terra liberos de ſanguine exiſtentes, villanos facere non poteſt. And therefore it is ſaid, (d) Eſt enim ratio & regula generalis in iſtis duobus caſibus, quod liber homo nihil libertatis propter perſonam ſuam liberam confert villenagio, nec liberum tenementum è contrario

(c) Hil. 29. E. 1. coram Rege Ebor. in Theſaur.

(d) Bract. l. 4. fo. 170

trario mutat ſtatum aut conditionem villani. And again,

(e) Idem lib 1. c. 6. Brit. c. 31. & 66. Flet. lib. 1. c. 3.

(e) Villenagium vel ſervitium nihil detrahit libertati, habita tamen diſtinctione utrum tale, ſint villani, & tenuerunt in villano ſocagio de dominico Domini Regis. And again,

(f) Bract. fol. 26. 43. E. 3. 5. acc.

(f) Tenementum non mutat ſtatum liberi non magis quam ſervi, poterit enim liber homo tenere purum villenagium faciendo quicquid ad villanum pertinebit, & nihilominus liber erit, cum hoc faciat ratione villenagii, & non rationæ perſonæ ſuæ, & ideo poterit quando voluerit villenagium deſerere, & liber diſcedere niſi illaqueatus ſit per uxorem nativam ad hoc faciendum ad quam ingreſſus fuit in villenagium, & quæ præ-

franke home villein. Mes un villein puit faire franke tenᵗ deſte villein tenᵗ a ſon Sᵍnr. Sicome lou un villein purchaſe tenᵗ en fee ſimple, ou en fee taile, l' Seignioꝛ del villein poet enter en la terre, & ouſte le villein & ſes heires a touts iours, & puis le Seignioꝛ (ſil voloit) puit leſſer meſme la terre, a le Villein a tener en Villenage.

Villein may make free Land to be Villein Land to his Lord. As where a Villein purchaſeth Land in fee ſimple, or in fee tail, the Lord of the Villein may enter into the Land and out the Villeine and his Heirs for ever: And after, the Lord (if he will) may let the ſame Land to the Villein, to hold in Villenage.

ſtare poterit impedimentum, &c. And again,

(g) Bract. lib. 4. fo. 208. Brit. ca. 31.

(g) Purum villenagium eſt, à quo præſtatur ſervitium incertum & indeterminatum ubi ſcire non poterit veſpere, quale ſervitium fieri debet mane, viz. ubi quis facere tenetur quicquid ei præceptum fuerit. And another ſaith to the ſame intent,

(h) Bract. li. 1. ſp. 7.

Ceux ne ſcavoient le veſpere de quoy ils ſerveꝛ en la Matyn. (h) Fuerunt in Conqueſtu liberi homines qui libere tenuerunt tenementa ſua per libera ſervitia, vel per liberas conſuetudines, & cum per potentiores ejecti eſſent, poſtmodum reverſi receperunt eadem tenementa ſua tenenda in Villenagio, faciendo inde opera ſervilia ſed certa & nominata, &c. & nihilominus liberi, quia licet faciunt opera ſervilia, cum non faciunt ea ratione perſonarum, ſed ratione tenementorum, &c.

(i) Forteſc. ca. 42.

How villenage oꝛ ſerbitude began, and foꝛ what cauſe, it is ſaid (i) Ab homine & pro vitio introducta eſt ſervitus, ſed libertas à Deo hominis eſt indita naturæ, quare ipſa ab homine ſublata ſemper redire gliſcit, ut facit omne quod libertate naturali privatur. **And another ſaith,**

(k) Brit. ca. 31.

(k) **That the condition of Villeins from freedom unto bondage, of antient time grew by conſtitutions of Nations,**

(l) Bract. li. 1. c. 6. Flet. l. 1. c. 3. & c. 5. Mir. cap. 2. Sect. 18.

(l) Fiunt etiam ſervi liberi homines captivitate de jure gentium; **and not by the law of Nature, as from the time of Noahs Flood foꝛward, in which time all things were common to all, and free to all men alike, and lived under the Law natural, and by multiplication of people, and making proper and priuate thoſe things that were common, aroſe Battels. And then it was ordained by conſtitution of Nations, That none ſhould kill another, but that he that was taken in Battel, ſhould remain bond to his taker foꝛ ever, and to do with him, and all that ſhould come of him, his will and pleaſure, as with his beaſt, oꝛ any other Chattel, to give, oꝛ to ſell, oꝛ to kill: And after it was ordained foꝛ the cruelty of ſome Lords, That none ſhould kill them, and that the life and members of them, as well as of free men, were in the hands and protection of Kings, and that he that killed his Villein, ſhould have the ſame judgment as if he had killed a Freeman.** Thereupon they were called Servi, quia ſervabantur à Dominis & non occidebantur, & non à ſerviendo. **He is called** Nativus à naſcendo, quia plerumque natus eſt ſervus: **And he is called** Villanus, foꝛ **that he doth his Villein ſerbice in Villis.**

Bract. li. 1. ca. 6. Britt. c. 31. & ubi ſupr. Fleta l. 1. c. 2. & 3.

Eſt autem libertas naturalis facultas ejus quod cuique facere libet niſi quod de jure, aut vi prohibetur. Servitus eſt conſtitutio de jure gentium qua quis Domino alieno contra naturam ſubjicitur.

(m) Mirror c. 2. Sect. 18.

And again (m) Er tout ſoyt que touts creatures duiſſent eſte franks ſolonque le Ley de nature, per conſtitution nequidant, & fait de homes ſont auters creatures enſervies, ſicome eſt dit beaſts en Parkes, piſſons en ſervors, & oyſeaux en cages.

(n) Mirror c. 2. Sect. 18. Geneſis 9. ver. 10, 11. &c.

(n) **This is aſſured, That bondage oꝛ ſerbitude was firſt inflicted foꝛ diſhonouring of parents: foꝛ Cham the Father of Canaan (of whom iſſued the Canaanites) ſeeing the nakedneſs of his Father Noah, and ſhewing it in deriſion to his Brethren, was therefore puniſhed in his ſon Canaan with bondage. And herewith agreeth the Diuine,** Ante vini inventionem inconcuſſa libertas: non eſſet hodie ſervitus ſi ebrietas non fuiſſet.

Ambroſe.

¶ *Hors del Citie ou del Manner, &c.* **This is falſe printed, foꝛ the original is,** Hors del ſcite del Mynnor, **and ſo would it be amended at the impreſſions of the Book hereafter.**

¶ *Et*

¶ *Et aſcuns frank homes teignont, &c.* This is apparent enough, eſpecially upon that which hath been ſaid. Mirror c. 2. Sect. 18. Acc.

¶ *Ou un Villeine purchaſe terre en fee ſimple.* Yet the Villain may purchaſe ſome kind of Inheritances in fee ſimple, which the Lord of the Villain cannot have. As if a Villain purchaſe a Common ſans nomber, the Lord ſhall not have it, for the Lord may ſurcharge the ſame, which ſhould be a prejudice to the Terre-tenant, and the ſame law of a Corodie in certaine granted to a Villain, and ſuch like Inheritances. And therefore Littleton materially ſaid, Purchaſe terre: when the Villain hath an eſtate of any thing certain, the Lord ſhall have it as a rent granted to the Villain, Commons certain, Eſtovers certain, and ſuch like. (o) But that which lieth in action as a warranty made to the Villain, his heirs and aſſigns, the Lord ſhall not take advantage of by Voucher, becauſe it is in lieu of an action, neither ſhall the Lord take advantage of any obligation or covenant, or other thing in action made to the Villain, becauſe they lie in privity, and cannot be tranſferred to others. Mirror c. 2. Sect. 18. 22. Aſſ. p. 37. (o) Doct. & Stud. c. 43.

(p) If a man be a Leſſee of a Villain for life, for years, or at will, and the Villain purchaſeth Lands in fee, if the Leſſee entreth into the Lands, he ſhall hold the Lands as a perquiſite to him and his heirs for ever. But if a Biſhop hath a Villain in the right of his Biſhopprick, and he purchaſeth Lands, and the Biſhop entreth, the Biſhop ſhall have this perquiſite to him and his ſucceſſors, and not to him and his heirs, for the Law reſpecteth the quality, and not the quantity of his eſtate. So if the Executors have a Villain for years, and the Villain purchaſe lands in fee, and the Executors enter, they ſhall have a fee ſimple, but it ſhall be aſſets. (p) L. 5 E. 4. 61 18 E. 3. 29 21. H. 6. 38. Broo. tit. Vil. 70.

¶ *Fee taile.* By this it is apparent, that if Lands be given to a Villain and to the heirs of his body, the Lord may enter and put out the Villain and the Heirs of his body, for, Quicquid acquiritur ſervo acquiritur Domino, And in this caſe the Lord gains a fee ſimple determinable by the dying of the Villain, without heir of his Body, and the abſolute fee ſimple remaineth ſtill in the Donor. And if the Lord enter, and after infranchiſe the Donee, and after the Donee hath iſſue, yet that iſſue ſhall never have remedy either by Formedon or entry to recover this Land, by force of the Statute of Donis Conditionalibus, for that Statute giveth remedy to the iſſues of the Donee that have capacity and power to take and retain ſuch a gift. And the title of the Lord remains as it did at the Common Law, for the Statute reſtraineth acts done only by the Tenant in tail. And ſo it is if Lands be given to an alien, and to the heirs of his body, upon office found, the land is ſeiſed for the King, afterwards the King makes the Alien a Denizen, who hath iſſue and dieth, the King ſhall detain the Land againſt the Iſſue. 15. E. 4. 9. b. Pl. Com. 555 in Walſinghams caſe.

Sect. 173.

¶ ET nota, ſi feoffm̃t ſoit fait a certaine perſon ou perſons en fée al uſe dun villeine, ou ſi un villeine, oue auters perſons ſoient enfeoffes al uſe le villeine, quel eſtate que le villeine ad en le uſe, en fee Taile, pur terme de vie, ou bans, l' Seignior del villeine poit entrer en touts ceux terres & tenements, ſicome l' villein uſt eſte ſole ſeiſie del demeſn̄. Et ceſt per Leſtatute de Anno 19. H. 7. c. 15.

AND note, if a feoffment be made to a certain perſon or perſons in fee, to the uſe of a Villain; or if a Villain with other perſons, be infeoffed to the uſe of the Villain, what eſtate ſoever that the Villain hath in the uſe, in fee tail for term of life or years, the Lord of the Villain may enter into all thoſe lands and tenements, as if the Villain had been ſole ſeiſed of the demeſne. And this is given by the Statute of *Anno* 19. *H.* 7. *c.* 15.

¶ This is an addition to Littleton, and the Statute of 19. H 7 c. 15. therein mentioned, for the cauſe that hath been aforeſaid, hath loſt his force.

Sect. 174.

¶ *A Paier un fine pur le mariage, &c.* (q) And this Villain and ſervile tenure is called in old Books Marcheta, or mercher. Marchetum verò pro filia dare non competit libero homini inter alia propter liberi ſanguinis privilegium, &c. And this is true De Communi jure, ſed modus & conventio vincunt legem. And as Littleton here ſaith, it is the folly of ſuch a freeman to take ſuch Mannors, Lands, or Tenements to hold of the Lord by ſuch bondage. And yet this doth not make ſuch a freeman a Villain, (r) Quia hujuſmodi præſtationes fiunt ratione tenementi, & non ratione perſonæ in donatione comprehenſæ & reſervat', non enim unum & idem eſt, ſed longe aliud, tenere libere, & per liberum ſervitium, &c. for the ſignification of this word, Vide Sect. 194. 74. 441.

(q) 15.E.3. tit. aid. 33. Bracton lib.2.fo.26. Mirror c. 2. Sect. 18.

See more of this after in this Chapter, Sect. 194.

(r) Fleta lib.3.c.13. Mir. cap.2.Sect.18.

¶ **Mes ſi aſcun frank home voile prender aſcun fres ou tenements a tener de ſon Sir p tiel villein ſervice, ſ. a payer un fine a luy pur le mariage de ſes fits ou files, donque il paiera tiel fine pur le mariage, nient obſtant que il eſt le folie de tiel frank home de prender en tiel foꝛm terres ou tenements a tener de le ſeignioꝛ per tiel bondage, uncoꝛe ceo ne fait le franke home villeine.**

But if a free man will take any Lands or Tenements to hold of his Lord by ſuch Villain ſervice, *viz.* to pay a fine to him for the Marriage of his Sons or Daughters, then he ſhall pay ſuch fine for the Marriage, yet notwithſtanding though it be the folly of ſuch free man to take in ſuch form Lands or Tenements to hold of the Lord by ſuch bondage, yet this maketh not the free man a Villain.

Sect. 175.

¶ *Heſcun villein ou eſt villein per title de preſcriptiõ &c.* Every Villain is either by preſcription or confeſſion, Servi autem naſcuntur aut fiunt. By preſcription, either regardant to a mannor, &c. or in groſs. In groſs either by preſcription or by granting away a Villain that is regardant or by confeſſion. (t) Fit etiam ſervus liber homo per confeſſionem in curia Regis fact'.

Lib.Rub c.76 77. Bracton l. 1. c. 6. Bract. fol. 77.

(t) Bract. l. 1. c. 6. Fleta lib. 1. cap. 3. 8.Aſſ.p 13. 11.Aſſ.12. 24. Aſſ. 1. 73. Aſſ. 1. 17.E.3.78,79.27.E.3.89 18.E.4.25. 27.H.8.7 b. Le Statu.de 17.E.3.c.17

¶ **Item cheſcun villeine, ou eſt un villeine p title de preſcription, ceſtaſcavoir, q̃ il & ſes aunceſtoꝛs ont eſte villeins ð temps dont memoꝛie ne curt, ou il eſt villein per ſon confeſſion demeſne en Court de Recoꝛd.**

Alſo every Villein is either a Villein by title of Preſcription, to wit, that he and his Anceſtors have been Villeines time out of minde of man, or he is a Villain by his own confeſſion in a Court of Record.

¶ *En Court de Record.* Record is derived of the Latin word Recordor, that is to keep in mind as the Poet ſaith, Si rite audita recordor. And therefore a Record or Inrollment is a memorial or monument of ſo high a nature, (t) as it importeth in it ſelf ſuch an abſolute verity, as if it be pleaded, that there is no ſuch Record, it ſhall not receive any trial by Witneſs, Jury, or otherwiſe, but only by it ſelf. (u) And every Court of Record is the Kings Court, albeit another may have the profit, wherein if the Judges do err, a Writ of error doth lie. (x) But the County Court, the Hundred Court, the Court Baron, and ſuch like are no Courts of Record, and therefore the proceedings therein may be denied, and tried by Jury, and upon their judgments a Writ of error lieth not, but a writ of falſe judg-

(t) 17.E.3.23. 11.H.4 26 37.H.6.21. Dier Mich.7 & 8. Eliz 242. Pl. Com. 79, &c.

(u) Glanvil.l.9.c.8. Bract. l. 5. fol. 156. Britton fol. 121.

(x) Lib.6.f. 1. & 12. in Gentlemans caſe.

ment

ment for that they are no Courts of Record, because they cannot hold plea of debt or trespass if the debt or damages do amount to 40 shillings, or of any trespass Vi & armis.

Monumenta quæ nos recorda vocamus sunt veritatis & vetustatis vestigia.

Sect. 176.

¶ Mes si franke home ad diverz issues, & puis il confesse luy un destre villein a un auter en Court de Recordz, uncore les issues que il avera devant le confes. sont franks, mes les issues que il avera apres le confession serront villeines.

But if a free man hath divers issues, and afterwards he confesseth himself to be a Villain to another in a Court of Record, yet those issues which he hath before the confession are free, but the issues which he shall have after the confession shall be Villains.

This is so evident as it needeth no explication.

Sect. 177.

¶ Item, si le villein purchase terr & alien la terre a un auter devant que le seignior enter, donques le Seignior ne poit enter car il serra adiudge son follie q̄ il nentra pas quant la terre fuit en le maine le villein. Et illint est dez biens si le Villeine achate biens, & eux vend ou done a un auter devant que le Seignior seisist les biens, adonques le Seignior ne poit eux seiser. Mes si le seignior devant ascū tiel vender ou done, viēt deins la ville la lou tielx biens sont, & la obertment enter les vicines claima les biens & seisist parcel

Also if a Villain purchase land & alien the land to another, before that the Lord enter, then the Lord cannot enter, for it shall be adjudged his folly that he did not enter when the Land was in the hands of the Villain. And so it is of goods: If the villain buy goods and sell or give them to another, before the Lord seiseth them, then the Lord may not seise the same: but if the Lord before any such sale or gift, cometh into the Town where such goods be, and there openly amongst the neighbors claim the goods, and seise part of the goods in the name of seisin

¶ In this case before the Lord doth enter, he hath neither jus in re nec jus ad rem, but only a possibility of an estate, which estate he must gain by his entry, and therefore if the Villain doth by way of prevention alien before the Lord doth enter, the Lord is barred of the possibility which he had to the Land for ever. (a) Si autem servus vendiderit feodum quod sibi & hæredibus perquisiverit antequam Dominus seisinam inde ceperit, valet donatio, & Dominus sibi ipsi imputet, quod tantum expectavit. But (b) if the Villain of the King purchaseth Land and alieneth before the King (upon an Office found for him) doth enter, yet the King after office found shall have the Land, Quia nullum tempus occurrit Regi, as Littleton himself saith in the next Section. And yet after office found the King shall not have the mean profits, because the title is by the seisure.

(a) Fleta l. 2. c. 13. Britton fol. 98. a. 19. E. 2. Dower 171.

(b) 35. E. 3. tit. villen 32 9 H. 6 21. per Babington 12. H. 7. 12.

¶ *Purchase terre.* The like law is of Seignories, Advowsons, Reversions, Remainders, Rents, Commons certain, and such like certain Inheritances, wherein the Villain hath

hath any eſtate or intereſt. If the Villain purchaſe Land either in Fee ſimple, Fee tail, or for life, if the Villain doth alien before the Lord doth enter, he doth prevent the Lord. But yet the iſſue of the Villain ſhall recover the Land intailed in a Formedon, and then the Lord may enter.

des biens en noſme de ſeiſin de touts les biens q̄ le villeine ad ou aver poſt, &c. Ceo eſt dit bon ſeiſin en ley, & le occupation que le villeine ad apres tiel claime en l'z biens, ſerra pris en le droit le Seignior.

of all the goods which the Villain hath or may have, &c. this is a good ſeiſin in Law, and the occupation which the Villain hath after ſuch claim in the goods ſhall be taken in the right of the Lord.

¶ *Alien la terre.* Alien cometh of the Verb Alienare, id eſt, alienum facere vel ex noſtro dominio in alienum transferre, ſive rem aliquam in Dominium alterius transferre. If a freeman hath iſſue, and after wards by confeſſion becometh bond, and purchaſe Lands in fee, and before the Lord enter he dieth ſeiſed, and the Land deſcends to his iſſue which is free, in this caſe the Lord ſhall not enter upon the heir, and yet this is a deſcent and no alienation. The like Law it is if the Land ſo purchaſed by the Villain doth eſcheate to the Lord of the Fee before any entry made by the Lord of the Villain: ſo as the act of the Law, that is, the deſcent or eſcheat may as well prevent the Lord of his entry, as the act of the party by alienation.

If a Villain be diſſeiſed before the Lord doth enter, the Lord may enter into the Land in the name of the Villain, and thereby gain the inheritance of the Land. but if there be a deſcent caſt, ſo as the entry of the Villain be taken away, then the Villain muſt recontinue the eſtate of the Land by Judgment and Execution, before the Lord of the Villain can enter; and this word alien doth not only extend to alienations of Land in deed, but alſo to alienations in law, as if the Villain purchaſe Land and dieth without heir, and the Land eſcheats, or if there be a recovery againſt the Villain in a Ceſſavit or the like.

¶ *Et iſſint eſt des biens, &c.* Biens, bona, includes all chattels as well real as perſonal. Chattels is a French word, and ſignifies goods, which by a word of Art we call Catalla. Now Goods or Chattels, are either perſonal or real. perſonal as Horſe and other Beaſts, Houſhold-ſtuff, Bows, Weapons, and ſuch like, called perſonal, becauſe for the moſt part they belong to the perſon of a man, or alſo for that they are to be recovered by perſonal actions. Real, becauſe they concern the reality, as terms for years of Lands or Tenements, Wardſhips, the intereſt of Tenant by Statute Staple, by Statute Merchant, by Elegit and ſuch like.

Bona dividuntur in mobilia & immobilia, mobilia rurſum dividuntur in ea quæ ſe movent & quæ ab aliis moventur: but by the Common Law, no eſtate of Inheritance or Free-hold is comprehended under theſe words bona or catalla. And it is to be obſerved, that as the title of the Lord to his Villains Lands beginneth by his entry, ſo his title to the goods beginneth by the ſeiſure of them. And here again it is to be obſerved, that where our Author in this ſtand concerning goods, uſeth theſe words (ſell or give) that the ſame extendeth as well to gifts in Law as gifts in Deed. And therefore if a Neif hath goods, and taketh Baron, by this gift in Law by force of the Marriage, the Lord is barred. And ſo it is if a Villain make his Executors and dieth, by this gift in Law the Lord is barred, as ſhall be ſaid hereafter.

3. H. 4. 15. 46. E. 3. barre 217. Doct. & Stud. c. 43. fol 139.
22. E. 3. 6. Baldwin Frevils caſe.

¶ *Et claime les biens & ſeiſiſt parcel des biens.* For a claim only of the goods of the Villain is not ſufficient in Law, but he muſt ſeiſe ſome part in the name of all the reſidue, as here it appeareth, or that the goods be within the view of the Lord. for the claim and his view amount to a ſeiſure, as the claim of a Ward being preſent by word is a ſufficient ſeiſure, albeit the Guardian lapeth no hands of him. See hereafter Sect 321. And ſo note a diverſity between a claim of Lands or Tenements, and Goods (c) In an Action of Treſpaſs or Detinue brought by the Villain, a Releaſe made to the defendant by the Lord is a good bar, for that amounts to a ſeiſure and grant. If the Villain doth buy goods and make his Executors, and dieth before the Lord doth ſeize them, the Executors ſhall detain them againſt the Lord of the Villain.

(c) 18. H. 6. 23. b. pr. Acough. 3. H. 4. 16. 46. E. 3. barre 217.

¶ *Ad ou aver poſt, &c.* Here (&c.) doth implie an excellent point of learning. for that ſuch a claim doth not only veſt the goods which the Villain then hath, but alſo which he after that ſhall acquire and get. But otherwiſe it is of Lands of free-hold or Inheritance, for there ſuch a general entry or claim extends only to the Lands the Villain hath at that time,

time, and not to any other which he hath purchaſe after: As by our Author in this Section may ſufficiently be collected.

Sect. 178.

¶ Mes ſi le Roy ad un villein que purchaſe terre, & alien devant que le roy entra, uncore le roy poit enter en que maines que la terre devienda. Ou ſi le villein achata biens, & eux vendiſt devant que le Roy ſeiſiſt les biens, uncore le roy poit ſeiſer les biens en que maines que les biens ſont, Quia nullum tempus occurrit Regi.

BUt if the King hath a Villain who purchaſes Land, and alien it before the King enter, yet the King may enter into whoſe hands ſoever the Land ſhall come. Or if the Villain buyeth goods and ſell them before that the King ſeizeth them; yet the King may ſeiſe theſe goods in whoſe hands ſoever they be. Becauſe *Nullum tempus occurrit Regi.*

¶ *Si le roy ad villein, &c.* This is evident upon that which hath been ſaid before. Vide Sect. 125. Vide Stanford. prær. f. 32. c.

¶ *Ou ſi iel villein achata biens, &c.* If the Kings villain acquire any goods or chattels, the property of them is in the King before any ſeiſure or office, and it is well ſaid of an antient Author, (d) Al roy quant al droit de la corone ou a franch eſtate ne poit nul temps occurre, and another (e) ſpeaking of the perſon of the King ſaith, Nul temps neſt limit quant a mes droits. 35. E. 3 tit. Villenage 22. (d) Mirror cap. 3. (e) Britton fol. 88. Bract. l. 1. quæres Domini pollint.

Sect. 179.

¶ Item ſi home leſſa cert terre a un auter per terme de vie ſavant le reverſion a luy, & un villein purchaſe del leſſor le reverſion: en ceſt cas il ſemble que le ſeignior del villeine poit maintenant veſt a la terre, & claime le reverſion come le Seignior le dit villeine, & per cel claime le reverſion eſt maintenant en luy. Car en auter forme il ne poit bener a le reverſion. Car il ne poit enter ſur le tenant a terme de vie. Et il doit demurrer tanque apres le mort le tenant a terme

ALſo if a man let certain land to another for term of life ſaving to himſelf the reverſion, and a Villain purchaſe of the leſſor the reverſion: in this caſe it ſeemeth that the Lord of the Villain may preſently come to the land and claim the reverſion as the Lord of the ſaid villain, and by this claim the reverſion is forthwith in him. For in other form or maner he cannot come to the reverſion. For he cannot enter upon the tenant for life. And if he ſhould ſtay until after the death of the Tenant for

¶ *Poit maintenāt vener a la terre.* For he cannot claim the reverſion but upon the Land, and he by his coming upon the Land for that purpoſe is no treſpaſſor, becauſe the Law giveth him power to claim the reverſion, leſt he ſhould be prehented, and claim he cannot unleſs he cometh to the Land. Do likewiſe if the Villain purchaſe a Seigniory, Rent, Common, or any other Free-hold or Inheritance out of any Lands or Tenements of another, the Lord may lawfully

fully come to the Land to make his claim to the ſeigniory, rent, or other profit out of the Land. But if the Villain purchaſe a Seigniory or a rent, common, or other inheritance

Vide 41. E. 3. tit. Audita querela 15.
12. H. 4. tit. Execution. 28.
F. N. B. 104.
1. H. 7. 15. b.

de vie, donques per cas il viendra trope tarde. Car peradvent le villeine voile granter ou aliene le reverſion a un auter en le vie le tenant a terme d vie, &c.

life, then perchance he ſhould come too late. For peradventure the Villain will grant or alien the reverſion to another in the life of the Tenant for life, &c.

iſſuing out of the Land of the Lord himſelf, it is ſaid that the Seigniory, Rent, Common, or ſuch other Inheritance is extinguiſhed in the Lords poſſeſſion without any claim

¶ *Grant.* Here muſt be intended an attornement, for after the grant and before attornement the Lord may not claim the reverſion.

¶ *En la vie del tenant per vie, &c.* Here by (&c.) is included tenant in tail, tenant per auter vie, tenant by Statute Marchant, Staple, Elegit, and for years; for during all theſe eſtates the Lord may claim the reverſion, as well as in caſe of the Tenant for life.

Sect. 180.

¶ *Advowſon.* Advocatio ſo called becauſe the right of preſenting to the Church was firſt gained by ſuch as were founders, Benefactors, or Maintainers of the Church, viz. ratione fundationis, as where the Anceſtor was founder of the Church, or ratione donationis, where he endowed the Church, or ratione fundi, as where he gave the ſoil whereupon the Church was built, and therefore they were called Advocati; they were alſo called Patroni, and thereupon the Advowſon is called Jus Patronatus. And in one word Advowſon of a Church is the right of preſentation or collation to the Church. Advocatus eſt ad quem pertinet jus advocationis alicujus Eccleſiæ, ut Eccleſiam nomine proprio non alieno poſſit præſentare. Every Church is either preſentative, collative, donative, or elective. Vide Sect 645. 648.

13. H. 14. b.

Fleta l. 5. c. 14.

¶ En Meſme le maner eſt, lou un villein achate un Advowſon dun eſgliſe dun incumbēt, le Seignior del villein poit venir al dit eſgliſe, & claime le dit advowſon, & per cel claim l'advowſon eſt en luy. Car il doit attendre tanq; apres le mort lincumbent, & adonque a preſenter ſon clerke a le dit eſgliſe, donque en le meane temps le villeine poit aliener le advowſon, & iſſint ouſte le Seignior de ſon preſentment.

IN the ſame manner it is, where a Villain purchaſes an Advowſon of a Church full of an Incumbent, the Lord of the Villain may come to the ſaid Church, and claim the ſaid Advowſon, and by this claim the Advowſon is in him. For if he will attend till after the death of the Incumbent, and then to preſent his Clerk to the ſaid Church, then in the mean time, the Villain may alien the Advowſon, and ſo ouſt the Lord of his preſentment.

24. E. 3 30. 25. E. 3. 47.
38. E. 3. 9. 44. E. 3. 3.
9. H. 6. 31. 22 H. 6. 27.
21. E. 4. 34. b.
Vide Sect. 648.
10. H. 6. 7.

¶ *Plein dun incumbent.* If the Church be preſentative, the Church is full by admiſſion and inſtitution againſt any common perſon, but againſt the King it is not full until induction.

¶ *Incumbent,* Cometh of the verb incumbo, that is, to be diligently reſident, id eſt, obnixe operam dare, and when it is written encumbent it is falſly written, for it ought to be incumbent, as Littleton doth here. And therefore the Law doth intend him to be reſident on his Benefice.

¶ *Li*

¶ *Le Seignior del villeine poit vener al egliſe & claime le dit adwewſon.* Note albeit the Advowſon is a thing incorporeal, and not viſible, yet becauſe the principal duty of the preſentee of the Patron is to be done in the Church, the claim of the Lord of the villain muſt be made there, and by that claim the Inheritance of the Advowſon ſhall be veſted in the Lord; for every claim or demand to veſt any eſtate or intereſt muſt be made in that place which is moſt apt for that purpoſe.

¶ *Apres la mort del incumbent.* Note, a Church preſentative may become void five manner of ways, viz. by death, whereof Littleton here ſpeaketh 2. By creation. 3. By reſignation. 4. By deprivation. 5 By ceſſion, as by taking a Benefice incompatible. Doct. & Stud. lib. 2. c. 31 5. E. 3. 180. 10. E. 3. 482. 25. E. 3. 49. 9. E. 3. 462. 11. H. 4 37. 59. & 76. 41. E. 3. 5. F. N. B. 31, 32.

¶ *Et donques a preſenter ſon Clerke al dit egliſe, &c.* A preſentation is deſcribed A præſentando, quia præſentare nihil aliud eſt quam præſto dare, ſeu offerre. And Littleton here briefly expreſſeth the effect of a preſentation, for it is the Act of the Patron offering his Clerk to the Biſhop of that Diocels to be inſtituted to ſuch a Church in theſe or the like words directed to the Biſhop, Præſento vobis A. B. Clericum meum ad Eccleſiam de Dale, &c. This may be done as well by word as by writing, and if it be by writing it is no Deed, for the preſentation is of the Clerk, and the direction to the Biſhop, ſo as this writing is in nature of a Letter to the Biſhop: and this is the reaſon that the King himſelf may preſent by word, as elſewhere is ſaid. A villain at this day purchaſeth an Advowſon in fee, the Church becomes void, the Lord for 100 pound given by A. B. Clerk, preſents him to the Church, and his Clerk is admitted, inſtituted, and inducted, yet this gaineth not the Advowſon to the Lord. (d) And ſo it is in that caſe if any on the behalf of A. B. had given or contracted with the Lord in conſideration of any valuable thing to preſent A. B. to the ſaid Church, albeit it had been without the conſent or knowledge of A. B. yet it ſhould not have veſted the Advowſon in the Lord. But this was not Law when Littleton wrote. (e) But now by the Statute of 31. Eliz. the preſentation, admiſſion, inſtitution, and induction in both the ſaid caſes and in the like are made void, where before the ſaid ſtatute they were but voidable by deprivation. And if a man preſent by uſurpation to a benefice by reaſon of any corrupt contract, agreement, &c. that preſentation, and the inſtitution and induction thereupon are void, for that act extends to all Patrons as well by wrong as by right; but where any preſents by uſurpation, the rightful Patron may loſe his preſentation. And ſuch an incumbent that cometh in by reaſon of any ſuch corrupt agreement is ſo abſolutely diſabled for ever after to be preſented to that Church, as the King himſelf, to whom the Law giveth the title of Preſentation in that caſe, cannot preſent him again to that Church, for the Act being made for ſuppreſſion of ſimony, and ſuch corrupt agreements, ſo binds the King in that caſe, as he cannot preſent him that the Law hath diſabled; for the words of the Act be, Shall thereupon and from thenceforth be adjudged a diſabled perſon in Law to have or enjoy the ſame Benefice. (f) And the party being diſabled by the Act of Parliament (which being an abſolute and direct Law) cannot be diſpenſed withal by any grant, &c. with a Non Obſtante, as it may be, when any thing is prohibited Sub modo, as upon a penalty given to the King. And the ſaid Act doth not only extend to Benefices with Cure, but to Dignities, Prebends, and all other Eccleſiaſtical Livings. (d) Adiudg. in communi banco. Mich. 41. & 42. Eliz. inter Baker & Rogers. (e) Adjudged in the Kings Bench Mich. 13. Ja. in a quar. Imp. brought by the King againſt the Biſh. of Norw. Thomas Cole & Robert Secker Clerk for the Vicarage of Haverel in Suffolk. (f) Pl. Com. 502 27. H. 8. 2. H. 7. 6. 11. H. 7. 11. 13. H. 7. 8. b. 11. H. 4. 76. 5. E. 3. 29. F. N. B. 211. E.

¶ *Clerke.* Clericus is two-fold, Eccleſiaſticus (which Littleton here intendeth) and he is either ſecular or regular, ſo called becauſe he is Servus & hæreditas Domini: and Laicus, and in this ſenſe is ſignified a Pen-man, who getteth his living in ſome Court or otherwiſe by the uſe of his pen. 4. H. 4. ca. 12.

Note, if the Church becometh void, albeit the preſent advowſon be not by Law grantable over, yet may the Lord of the villain preſent in his own name, and thereby gain the Inheritance of the Advowſon to him and his heirs; for albeit it be not grantable over, yet it is not meerly a Choſe in action, (g) for if a Feme Covert be ſeiſed of an Advowſon, and the Church becometh void, and the wife dieth, the Huſband ſhall preſent to the Advowſon (h) but otherwiſe it is of a bond made to the wife, becauſe that is meerly in action. g) 14. H. 4. 12. 38. E. 3. 35 13. E. 3. quare imp. 57. (h) 43. E. 3. 10. 39. E. 3. 5. 4. H. 6. 5.

Sect. 181.

¶ Item il pad villeine regarde, & villeine en gros.

Alſo there is a Villain regardant, and a Villain in groſs.

¶ *Villein regardant.* He is called regardant to the Manour, becauſe he hath the charge to do all baſe 8. H. 7. 5.

base or villenous ſervices within the ſame, and to guard and keep the ſame from all filthy or loathſom things that might annoy it: and his ſervice is not certain, but he muſt have regard to that which is commanded unto him. And thereupon he is called Regardant, A quo præſtandum ſervitium incertum & indeterminatum, ubi ſcire non poterit veſpere, quale ſervitium fieri debet mane, viz. ubi quis facere tenetur quicquid ei præceptum fuerit, As before hath been obſerved. And Littleton ſaith hereafter, That no other thing is ſaid to be regardant, but only a Villain: (i) Yet in old Books it was ſometimes applied to Herbites.

Bract. l. 2. c. 26. Mir. c. 2. Sect. 18.

Vide Sect. 184.

(i) 20. E 3. tit. Iſſue 30.

¶ *In groſſe*: Is that which belongs to the perſon of the Lord, and belongeth not to any Mannor, Lands, &c.

villein regardant eſt ſicome home eſt ſeiſie dun Mann a que un villein eſt regardãt, & celuy que eſt ſeiſie del dit mann, ou ceux q eſtak il ad en meſm le mannor ount eſte ſeiſies de le dit villein & de ſes Auncеſtors, come villeins & niefs regardants a meſme le mannor de temps dont memorie ne curt. Et villeine en groſſe eſt, lou un hõe ſeiſie dun Mannor a que un villeine eſt regardant, & il graunt meſm le villein p ſon fait a un auẽ, donqs il eſt villein en groſſe, & nemy regardant.

A Villain regardant is, as if a man be ſeiſed of a Mannor, to which a Villain is regardant, and he which is ſeiſed of the ſaid Mannor, or they whoſe Eſtate he hath in the ſame Mannor, have been ſeiſed of the Villain and of his Anceſtors, as Villains and Niefs regardant to the ſame Mannor time out of memory of man. And Villain in groſs is, where a man ſeiſed of a Mannor whereunto a Villain is regardant, and granteth the ſame Villain by his Deed to another, then he is a Villain in groſs and not regardant.

Sect. 182.

Mir. c. 2. Sect. 18.

¶ This needeth no explanation, but to adde the ſaying of an antient Author, Servage de home eſt ſubjection, iſſuant de cy grand antiquity, que nul franke cep poet eſtre troue per humane remembrance.

¶ Item ſi un hõe & ſez Anceſtors que hẽ il eſt, ount eſte ſeiſies dun villein et de ſes anceſtors, come des villeins en groſſe, de tẽps dont memorie ne curt, tiels ſont villeines en groſſe.

Alſo if a man and his Anceſtors whoſe Heir he is, have been ſeiſed of a Villain, and of his Anceſtors as of Villains in groſs, time out of memory of man, theſe are Villains in Groſs.

Sect. 183.

Vid. Sect. 441. 194. 174. 74.

(l) Bra. l. 5. Tract. 5. c. 28

(m) Glanv. l. c. 1.

¶ *Ou fine*. In Latin, Finis. (l) Ideo dicitur finalis concordia, quia imponit finem litibus, & eſt exceptio peremptoria. (m) Finis eſt amicabilis compoſitio & finalis concordia ex conſenſu & licentia

¶ Ethic nota, que tiels choſes q ne potẽt eſte grants, ne aliẽs ſans fait ou fine, home que voile aver tiels choſes per

And here note, that ſuch things which cannot be granted nor aliened without Deed or Fine, a man which will have

pie-

preſcription, ne poit auterment preſcriber forſque en luy, & en ſes Auncеſtors que heire il eſt & nemy per ceux parols, en luy & en ceux que eſtate il ad, p̄ ceo q̄ il ne poit aver lour eſtate ſans fait ou auter eſcripture, le quel covient deſte monſtre a le court, ſi il voile aver aſcun advantage de ceo. Et pur ceo que le grant & alienation dun villeine en gros ne giſt ſās fait ou aut̄ eſcriptu. hō̄e ne poit p̄ſcriber ē un villein ē gros ſās mō̄ſtrās d̄ſcripture, ſinon en ſoy meſme que claime le villeine, & en ſes Anceſtors que heire il eſt. Mes d̄ tiels choſes que ſont regardants ou appendāts a un Mannor, ou a auters terres & Tenements home poit preſcriber que il & ceux que eſtate il ad, queux fueront ſeiſies de le Mannor, ou de tiels terres & Tenements, &c. ont eſte ſeiſies de tiels choſes come regardants ou appendants a l' manor, ou a tiels tres et tenements, de temps dont memorie, &c. Et la cauſe eſt, pur ceo que ſuch things by preſcription, cānot otherwiſe preſcribe, but in him and in his Anceſtors whoſe heir he is, and not by theſe words, in him & them whoſe Eſtate he hath, for that he cānot have their eſtate without Deed or other Writing, the which ought to be ſhewed to the Court, if he will take any advantage of it. And becauſe the grant and alienation of a villain in groſs, lieth not without Deed or other Writing, a man cannot preſcribe in a villain in groſs, without ſhewing forth a Writing, but in himſelf which claims the Villain, and in his Anceſtors whoſe heir he is. But of ſuch things which are regardant or appending to a Mannor, or to other Lands and Tenements, a man may preſcribe, that he and they whoſe Eſtate he hath who were ſeiſed of the Mannor, or of ſuch Lands and tenements, &c. have been ſeiſed of thoſe things, as regardant or appendant to the mānor or to ſuch Lands and tenements time out of mind of man. And the

Domini Regis, vel ejus Juſticiariorum. (n) Talis concordia finalis dicitur eo quod finem imponit negotio, adeo ut neutra pars litigant' ab eo de cætero poterit recedere. Of the ſeveral parts of a Fine, and many incidents to the ſame, you ſhall read in my Reports. (n) Lib. 9. cap. 3. Stat. de Modo levandi Fines. Pl. Com. 357. Lib. 5 fo 38. Teyes caſe.

¶ *Que eſtate, &c.* Quorum ſtatum, as much to ſay Whoſe eſtate he hath. Here Littleton declareth one exceſſent rule, (o) That a man cannot preſcribe in any thing by a que eſtate, that ſpeth in grant, and cannot paſs without Deed or Fine; but in him and his Anceſtors he may, becauſe he comes in by deſcent without any conveyance. Neither can a man plead a que eſtate in himſelf, of any thing that cannot paſs without Deed, (p) but in another he may, as in bar of an Abowry, the Plaintiff may plead a que eſtate in the Seigniory in the Abowant. But Littletons words are to be obſerved, (Home que voile aver tels choſes per preſcription) Therefore (q) when a thing that lieth in grant is but a conveyance to the thing claimed by preſcription, there a que eſtate may be alledged of a thing that lieth in grant; as a man may preſcribe, that he and his Anceſtors, and all thoſe whoſe eſtate he hath in an Hundred, have time out of mind, &c. had a Leet, &c. this is good, &c. (o) 22. Aſſ. 53. 23. Aſſ. 63. 12. H. 7. 16. 18. (p) 39. H. 6. 8. 18. E. 4. 28 (q) 11. H. 4. 89. 19. R. 2. Action ſur le caſe 51. 13. E 3. Br. 671.

(r) Regularly the Plaintiff ſhall not intitle him by A que eſtate, but he muſt ſhew how he came by it; but after Abowry made, the Plaintiff ſhall plead a que eſtate, becauſe he is now become as a Defendant. (r) 9. E. 4. 3. b. 29 Aſſ. 19 2. H. 6. 10. 48. E. 3. tit. 33. 3. H. 28.

(ſ) A man may plead A que eſtate of a tenancy in tail or of an eſtate for life, ſo as he aberreth the life of them, but he cannot plead a que eſtate of a Leaſe for years, or at will. (ſ) 41. Aſſ. 2. 40. Aſſ. 28. 2. H. 4. 20. 15 E. 4. 1. 5 H. 7. 39. 18. E. 4. 10. 7. E. 6. tit. que Eſtate. Br. 31. 27 H. 6. 30. 7. El. Dyer 238.

(t) A Diſſeiſor, Abettour, Intruder, Recoveror, or any other that cometh in the poſſ, (t) 22. H. 6. 34. 6. E. 4. 12 31. H. 8. Que eſtate Br. 48 39. H. 6. 14. 9. H. 6. Eſtop. 25.

shall plead a que estate.

u) 11.H.4.81.27.H.6.32 9.E.4.3.2.E.6. tit. que estate 8. 1. E.6. que estate Br. 49.

(u) A que estate must be alledged in the Tenant or Defendant himself, and not in one in the mean condeyance from whombe claimeth, and yet some Books be to the contrary.

tiel Mannor, ou terres & tenements poyent passer per alienation sans fait, &c.

reason is for that such Mannor or Lands and Tenements may pass by alienation without deed, &c.

¶ *Le quel covient destre monstre al court.* The reason wherefore a Deed that is pleaded ought to be shewed to the Court is, because every deed must proove it self to have sufficient words in Law, whereof the Court must adjudge, and also to be proved by others as by witnesses or other proof if the Deed be denyed, which is matter of fact.

¶ *Per alienation sauns fait, &c.* Here by (&c.) is implied, that whatsoever passeth by Livery of seisin either in Deed, or in Law, may pass without Deed, and not only the Rents and Services parcel of the Mannor shall with the Demeans as the more principal and worthy pass by Livery without Deed, but all things regardant, appendant, and appurtenant to the Mannor, as incidents or adjuncts to the same shall together with the Mannor pass without Deed, all which, as here it appeareth, and elsewhere is said, shall pass without saying Cum pertinentiis.

Sect. 184.

¶ *Regardant.* Vide Sect. 181.

¶ *Appendants.* Appendant is any inheritance belonging to another that is superior or more worthy. In Law it is called Pertinens, quasi invicem tenens, holding one another, a word indifferent both to things appendant, and things appurtenant, the quality and nature of the things do make the difference; but regardant (as our Author saith) is only applyed to a Villain.(*) Appendants are ever by prescription, but appurtenants may be created in some cases at this day. As if a man at this day grant to a man and his heirs common in such a moor for his beasts levant or couchant upon his Mannor, or if he grant to another common of Estovers or turbary in fee simple to be burnt or spent within his Mannor, by these grants these Commons are appurtenant to the Mannor, and shall pass by the grant thereof. In the Civil Law it is called Adjunctum.

¶ Et est asceavoir, que nul chose est nosme regardant a un Mannor, &c. forsque villeine, mes certaine autres choses come advowson & common d pasture, &c. sont nosmes appendants al Mannor ou al terres & tenements, &c.

And it is to be understood that nothing is named regardant to a Mannor, &c. but a Villain, but certain other things, as an Advowson, and Common of Pasture, &c. are named appendant to the Mannor, or to the Lands and Tenements, &c.

Vide Sect. 1.
(*) 5. Ass. 9. 8. H 7. 4. 5. 18 H.8. Dier 30. b. Pl. Com. 381. F.N.B. fol. 181.

(x) 43. Ass. p. 10. 43. E. 3. 22.

(x) If A. be seised of a mannor whereunto the franchise of waife and strap and such like are appendant, and the King purchaseth the Mannor with the appurtenances, now are the royal Franchises reunited to the Crown, and not appendant to the Mannor; but if he grant the Mannor in as large and ample manner as A had, &c. it is said that the franchises shall be appendant (or rather appurtenant) to the Mannor.

(y) Hill & Granges case. Pl. Com. 168.

Concerning things appendant and appurtenant, two things are implied. (y) First that prescription (which regularly is the mother thereof) doth not make any thing appendant or appurtenant, unless the thing appendant or appurtenant agree in quality & nature to the thing whereunto it is appendant or appurtenant, as a thing corporeal cannot properly be appendant to a thing corporeal, nor a thing incorporeal to a thing incorporeal. But things incorporeal which lie in grant, as Advowsons, Villains, Commons, and the like, may be appendant to things corporeal, as a mannor house, or lands, or things corporeal to things incorporeal, as lands to an office. (z) But yet (as hath been said) they must agree in nature and quality, for (a) common of Turbary or of Estovers cannot be appendant or appurtenant to Land, but to a house to be spent there. (b) Nor a Leet that is temporal, to a Church or Chappel which is Ecclesiastical. Neither can a Nobleman, Esquire, &c. claim a seat in a Church by prescrip-

z) 1.H.7.24. Pl. Com. 169
(a) 5. Ass. 9.
(b) 10.E.3.5.37.H.6.34 26.H.8.4.1.4. to.36.37. in Tirringhams case.

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tion as appendant or belonging to land, but to a house, for that such a seat belongeth to the house in respect of the inhabitancy thereof, and therefore if the house be part of a Mannor, yet in that case he may claim the seat as appendant to the house for the reason aforesaid

Secondly, that nothing can be properly appendant or appurtenant to any thing unless the principal or superiour thing be of perpetual subsistence and continuance; for example. An Advowson, that is said to be appendant to a Mannor, is in rei veritate appendant to the Demesnes of the Mannor, which are of perpetual subsistence and continuance, and not to Rents or services, which are subject to extinguishment and destruction. 5. E. 6. Dier 70. b.

An Advowson is appendant to the Mannor of Dale, of which Mannor the Mannor of Sale is holden, the Mannor of Sale is made parcel of the Mannor of Dale by way of Escheat, the Advowson is only appendant to the Mannor of Dale.

And where it is said that a Chamber may be parcel of a Corody, and pass by the name of the Corody which may be extinguished, there he that hath the Corody hath but his habitation in the Chamber, as a Fellow of Trinity College in Cambridge hath in his Chamber, or as one that had a Corody and a Chamber in an House of Religion, he had but his habitation only. As for Offices of fee whereunto land may appertain, they are of perpetual subsistence, either being in esse, or in that they are grantable over. 31. H. 6. 15. b.

Note that an Advowson at one time may be appendant, and at another time in gross, as if the Mannor be divided between Coparceners, and every one hath a part of the Mannor without saying any thing of the Advowson appendant, the Advowson remains in coparcenary, and yet in every of their turns, it is appendant to that part which they have, and so it is if they make composition to present against common right, yet it remains appendant. But if upon such a partition an express exception be made of the Advowson, then the Advowson remains in Coparcenary and in gross, and so are the Books reconciled. 13. E. 2 quar. Imp. 170. 43. E. 3. 35. 13. E. 3. qua. Imp. 58. 17. E. 3. 38. 9 Eliz. Dier 259. 7 E. 3. 20. 19. E. 3. quar. Imp. 59. 35. H. 6. 32. 33. 38. H. 6. 9. 2. H. 7. 5.

Common de pasture. (c) Communia, it cometh of the English word Common, because it is common to many, and thereupon, and accordingly is here called by Littleton Common of pasture, for that the feeding of Beasts in the Land wherein the Common is to be had belongs to many. (c) Glanvil. l. 13. c. 36. Bract. lib. 4. c. 19. & 40. Brit. c. 55. 56, 57. Fleta l. 4. c. 19. Mirror c. 5. sect. 3.

(d) There be four kinds of Common of pasture, viz. Common appendant which is of common right, (and therefore a man need not prescribe for it) for beasts commonable (that is) that serve for the maintenance of the Plough, as horse and oxen to plow the Land, and for kine and sheep to compester the Land, and is appendant to arable Land. (d) 2 H. E. 3. Admeasurem. 8. Temps E. 1. Common 24. 17 E. 2. ibid. 23. 4. H. 6. 22. H. 6.

(e) The second is Common appurtenant, that is for beasts not commonable, as Swine, Goats, and the like. (f) If a man purchase part of the Land wherein Common appendant is to be had, the Common shall be apportioned, because it is of common right, but not so of a Common appurtenant, or of any other Common of what nature soever But both Common appendant and appurtenant, shall be apportioned by alienation of part of the land to which Common is appendant or appurtenaet, and for Common appurtenant one must prescribe. (e) 37. H. 6. 34. 26. H. 8. 4 F. N. B. 121. (f) Lib. 4. f. 37 38. &c. Tirringhams case.

(g) The third is Common per cause de vicinage, which differeth from both the other Commons, for that no man can put his beasts therein, but they must escape thither of themselves by reason of vicinity, in which case one may Inclose against the other, though it hath been so used time out of mind, for that it is but an excuse for trespass. (g) Lib. 8. fo. 78, 79. W. Wildes case.

The last is Common in gross, which is so called for that it appertaineth to no land, and must be by writing or prescription. Of common appendant, appurtenant, and in gross, some be certain, that is for a certain number of Beasts, some certain by consequent, viz. for such as be levant and couchant upon the land, and some be more incertain, as common sans number in gross, and yet the Tenant of the land must common or feed there also.

There be also (h) divers other Commons, as of Estovers, or Turbary, of Piscary, of digging for Coles, Minerals, and the like. (i) If Common appendant be claimed to a Mannor, yet in Rei veritate it is appendant to the Demesnes and not to the services, and therefore if a Tenancy escheate, the Lord shall not increase his Common by reason of that. (k) If a man claim by prescription any manner of Common in another mans Land, and that the owner of the Land shall be excluded to have Pasture, Estovers or the like, this is a prescription or custom against the Law, to exclude the owner of the soil, for it is against the nature of this word Common, and it was implied in the first grant that the owner of the soil should take his reasonable profit there, as it hath been adjudged. * (l) But a man may prescribe or allledge a custom to have and enjoy Solam vesturam terræ, from such a day till such a day, and thereby the owner of the soil shall be excluded to pasture or feed there, and so he may prescribe to have Separalem pasturam, and exclude the owner of the soil from feeding there. Nota diversitatem. (m) So a man may prescribe to have Separalem piscariam in such a water, and the owner of the soil shall not fish there, but if he claim to have Communiam piscariæ, or Liberam piscariam, the owner of the soil shall fish there, and all this hath (h) Fleta ubi supra. (i) 18. E. 3. fol. 43. (k) 15. E. 2. Prescript. 51. 12. H. 8. fol. 2. * Pasch. 26. Eliz. in the Kings Bench, int. White & Shirland in Com. Ox. Vide Sect. 1. & 2. (l) Vid. 3. E. 3. 29, 30. 4. E. 3. 7. 46. E. 3. 23. 15. E. 2. Prescript. 51. (m) 20. H. 6. 4. 10. H. 7. 24. Temps. E. 1. Assise 422.

(*) Inter Chinery & Fishen in le Com. banke in replevin & Mic. 29. & 30 Eliz. inter Shirlond & White in Com. Oxon. Et inter Foiston & Crachrode eodem termino in Essex.

been resolved (*) and therefore it is necessary for every man by learned advice to plead according to the truth of the case, for Parols font plea.

(n) A man seised of Land whereunto common is appendant, and is disseised, the disseisee cannot use the Common until he entreth into the Land whereunto it is appendant. (o) But if a man be disseised of a Mannor whereunto an Advowson is appendant, he may present unto the Advowson before he enters into the Mannor, and the reason of this diversity is because in the case of the Common it should be a prejudice to the Tenant of the soil. For if the Disseisee might do it, the Disseisor also might put on his Cattel, which should be a double charge to the Tenant, but not so of the Advowson.

(n) 19. H. 6. 33.
(o) Vide Sect. 541.

Sect. 185.

Bract. l. 1. c. 6. Britton fol. 78. Fleta l. 1. c. 3. 43. E. 3 4. b 29. E 2. tit. vill. 34. 18. E. 4. 29. (p) 19. H. 6. 32. 26. Ass. 62 37. Ass. 17. 11. H. 4. 16. in Appeal.

THis is intended in some action brought against him that made such confession, (p) or where he is brought into Court by course of Law, for if he cometh into the Court extrajudicially, and not by any due course of Law, such confession is without warrant of Law, and bindeth not the party, because the Court had no warrant to take it. But if a Præcipe be brought against one, he may confess himself Villain to an estranger, and that he holds the Land in Villenage of him, and this is good and shall bind him. And if in that case the Demandant reply, that he the day of his Writ purchased was a freeman, and thereupon issue is taken, and he is tried to be free, yet he shall remain Villain to the stranger in respect of his confession.

ITem si home voile en Court ô record soy conuster destre villein, que ne fuit villein adevant, tiel est villeine en grosse.

ALso if a man will acknowledge himself in a Court of Record to be a Villain, who was not a Villain before, such a one is a Villain in gross.

41. E. 3. tit. vill. 6.

19. H. 6. 32. b.

If a Writ of Nativo habend' be brought against one, and the Plaintiffe as he ought offereth in his Count to prove the villenage by the Cousins and Kindred of the Defendant, and thereupon produceth the Uncles of the Defendant who upon examination confess themselves to be Villains to the Demandant, this confession being entred of Record, doth so bind, that albeit they were so free before, they and the heirs of their bodies are by this confession bond and Villeins for ever, for the Uncles came in by due course of Law in an Action depending in Court.

Sect. 186.

F. N. B. 161. 2. Regist. 133. & 277. Britton. fol. 20 Bract. l. 3. tract. 2. c. 12. 13 Fleta l. 1. c. 28. 3. H. 5. tit. utlawry Statham.

NIefe. Or Naife is in Latin naturalis, seu nativa, because for the most part Niefes are bond by Nativity.

¶ *Feme que est utlage est dit waive.*

Waive, Waviata and not utlagata or exlex, for that women are not sworn in Leets, or Torns, as men which be of the age of 12 years or more be, and therefore men may be called utlagati, id est, extra legem positi, but women are Waiviatæ, id est, derelictæ, left out, or not regarded, because they were not sworn to the Law, wherein it is to be noted that of antient time a man was not said to be within the Law, that was not sworn to the Law, which is intended of the Oath of Allegiance in the Leet.

ITem home que est villeine est appelle villeine, & feme que est villeine est appelle niefe: & sicome home que est utlage est dit utlage, & feme que est utlage est dit waive.

ALso a man which is a Villain is called a Villain, and a woman which is Villain, is called a Niefe. As a man which is out-lawed, is called out-lawed: and a woman which is out-lawed, is called Waived.

Regist. orig. 132.

And the out-lawry of a woman is legally called Waiviaria mulieris.

Sect.

Sect. 187.

¶ Item ſi un Villein prent franke feme a feme, & ad iſſue enter eux, iſſues ſerront Villeines. Mes ſi niefe prent franke home a ſa baron, lour iſſues ſerra franke.

* Et ceſt contrarie a le ley civil, car la eſt dit, Partus ſequitur ventrem. *

Alſo if a Villain taketh a free woman to wife, and have iſſue between them, the iſſues ſhall be Villains. But if a Nief taketh a free man to her husband, their iſſue ſhall be free.

* This is contrary to the Civil Law, for there it is ſaid, *Partus ſequitur ventrem.* *

¶ Sulculus totum alimentum à ſtipite capit, poma tamen edit ſua. The Steng takes all his nouriſhment from the ſtock, and yet it produceth his own fruit. Forteſcue cap. 42. Glanvil l. 5. c. 6. Hill. 29 E. 1. coram Reg. Eborum in Theſaur.

(q) Si quis de ſervo patre natus ſit & matre libera, pro ſervo redddatur occiſus in ea parte, quia ſemper à patre, non à matre generationis ordo texitur: ſi pater ſit liber & mater ancilla pro libero reddatur occiſus. (r) Lex Angliæ nunquam matris ſed ſemper patris conditionem imitari partum judicat. (q) Lib. rub. c. 77. (r) Forteſcue ubi ſupra.

(ſ) The husband and wife are all one perſon in Law, and the Nief marrying a freeman (ſ) Herewith agreeth Britton fol. 78. b.

is infranchiſed during the coverture, and therefore by the Common Law of England, the iſſue is free.

(t) Si mulier ſerva copulata ſit libero, &c. quod partus habebit hæreditatem, & mater nullam dotem, quia mortuo viro ſuo libero redit in priſtinum ſtatum ſervitutis niſi hæres ei dotem fecerit de gratia. And when a bond man marrieth a free woman, they are all one perſon in Law, and Duæ animæ carne una, and uxor ſubjecta eſt viro, & ſub poteſtate viri. (t) Bract. l. 4. fo. 298. b. Idem lib. 1. cap. 6. Mirror c. 2. Sect. 18.

(u) Obſervatur in Com' Cornubiæ de tali conſuetudine, quæ talis eſt, quod ſi liber homo ducat nativam aliquam in uxorem ad liberum tenementum & liberum thorum, ſi ex ea quæ procreantur filiæ, una erit libera & altera villana, quia ibi partiri ſunt pueri inter liberum patrem & Dominum uxoris villanæ. (u) Bract. lib. 4. fol. 271.

(x) Qui vero procreantur ex nativa unius, & nativo alterius, proportionabiliter inter Dominos ſunt dividendi. (x) Glanvil l. 5. c. 6.

¶ *Et ceo eſt contrarie al ley civil.* For true it is that by the Law Partus ſequitur ventrem, as well where a free man takes a bond woman to wife, as where a bondman takes a free woman to wife. In the firſt caſe the iſſue is by the Civil Law bond, and in the other free, both which caſes are contrary to the Law of England: but this is no part of Littleton, and therefore we in this manner paſs it over. Forteſcue cap. 42.

Sect. 188.

¶ Item nul baſtard poit eſtre villein, ſi non que il voile ſoy conuſer eſtre villeine en court de record, car il eſt en ley quaſi nullius filius, pur ceo que il ne poit enheriter nulluy.

Alſo no Baſtard may be a Villain unleſs he will acknowledge himſelf to be a Villain in a Court of Record, for he is in law, *quaſi nullius filius*, becauſe he cannot be heir to any.

¶ *Nullius* (a) *filius*, Cui pater eſt populus, pater eſt ſibi nullus, & omnis.

Cui pater eſt populus, non habet ille patrem. (a) Vide Sect. 399. 13. E. 1. tit. villen. 36.

(b) Some hold that the Baſtard of a Nief ſhall be a Villain. (c) And others hold that if a Villain hath a Baſtard by a woman, and after marrieth the woman, that this Baſtard is a Villain, but the Britton ubi ſupra. (b) Bract. l. 1. fo. 5. a. Fleta lib. 1. c. 3. Britton fol. 78. (c) 39 E. 3. 34. 43. E. 3. 4.

law is contrary in both caſes, for in both caſes, the iſſue by the Common Law is a Baſtard, and conſequently quaſi nullius filius, as Littleton here ſaith. (d) Though a Baſtard be a reputed Son, yet is he not ſuch a Son in conſideration whereof an uſe can be raiſed for the reaſon that Littleton here yields, becauſe in judgment of Law he is Nullius filius. (e) And for (d) 23 Eliz. Dyer. 374. (e) 13. Eliz. Dyer 296.

14. Eliz. Dier 313. 18. Eliz. Dier 345.

for the ſame reaſon where the Statute of 32. H 8. of Wills ſpeaketh of Children, baſtard children are not within that Statute, and the Baſtard of a woman is no child within that Statute where the mother conveys Lands unto him.

(f) Trin. 18. E. 1. Rot. 61 Bedf. coram Rege.

(f) It was found by verdict that Henry the Son of Beatrice which was the Wife of Robert Radwel deceaſed, was born per undecim dies poſt ultimum tempus legitimum mulieribus conſtitutum. And thereupon it was adjudged, Quod dictus Henricus dici non debet filius prædicti Roberti ſecundum legem & conſuetudinem Angliæ conſtitut'. Now Legitimum tempus in that caſe appointed by Law at the furtheſt is nine months, or forty weeks, but the may be delivered before that time, which judgment I thought good to mention. And this agreeth with that in Eſdras, Vade & interroga prægnantem, ſi quando impleverit novem menſes ſuos adhuc poterit matrix ejus retinere partum in ſemetipſa? & dixit non poteſt Domine.

4. Eſdras 4. 41. Vide Pancirol, nova reporta, pag. 485. &c.

Sect. 189.

¶ *Heſcun Villeine eſt able & franke de ſuer, &c.* (g) In an Action brought by a Villain, Verſus non Dominum, non valebit ei exceptio, quia eſt ſervus alienus ex quo nihil ad ipſum

(g) Bract. l. 4. fo. 196. Britton c. 49. fo. 125.

h) 14. E. 4. 6. b. 15. E. 4. 32 20. E. 3. tit. Villein 10. 38. E. 3. 21.

utrum liber ſit an ſervus. (h) And it is to be obſerved, that he that hath but a particular eſtate in a Villain, as Tenant for life or for years, ſhall diſable the Villain if he brings an action againſt him, but the Leſſor ſhall not (as it is ſaid) diſable him, (i) Examinatio villenagii non tenet, niſi ex ore veri Domini fuerit pronunciata.

(i) Fleta lib. 2. cap. 4.

¶ **Item cheſcun villein eſt able & franke de ſuer touts maners dactions envers cheſcun perſon, forſpris envers ſon Seignior a que il eſt villeine. Et uncore en certain choſes il poit aver action envers ſon Seignior. Car il poit aver envers ſon Seignior un action dappeal de mort ſon pere, ou dauters de les auncesters que heire il eſt.**

ALſo every Villain is able and free to ſue all manner of Actions againſt every perſon, except againſt his Lord to whom he is Villain: and yet in certain things he may have againſt his Lord an Action, for he may have againſt his Lord an action of appeal for the death of his Father, or of his other Anceſtors whoſe heir he is.

¶ *Appeale.* Appellum cometh of the French word Appeller, that ſignifieth to accuſe or to appeach. An appeach.

(k) Britt. c. 22. fo. 38. Bracton l. 1. fo. 6.

(k) In appeal is an accuſation of one upon another, with a purpoſe to attaint him of felony by words ordained for it.

¶ *De mort.* (l) For a Villain ſhall not have an appeal of Robbery againſt his Lord, for that he may lawfully take the goods of the Villain as his own. (m) And if in an Appeal of death it be found for the Plaintiff, he is infranchiſed for ever. Hinc enim eſt quod eo ipſo ſunt hujuſmodi Domini ſervos ſuos amiſſuri cum de injuriis fuerint convicti. And there is no diverſity herein whether he be a Villain regardant, or in groſs, although ſome have ſaid the contrary.

(l) 18. E. 3. 32. 11. H. 4. 93 1. H. 4. 6. 29. H. 6. tit. Corone 17.

(m) Fict. l. 7. c. 5. 1. H. 4. 6

Sect. 190.

¶ *Rape.* (n) Raptus is when a man hath carnal knowledge of a woman by force and againſt her will.

(n) Mirror c. 1. Sect. 12. Cap. 3. de Rape. & cap. 4. de homicide.

¶ **Aury un Niefe que eſt ravie per ſa Seignior, poit aver un appeale de rape envers luy.**

ALſo a Nieſe that is raviſhed by her Lord, may have an Appeal of Rape againſt him.

¶ *Appeale de rape.* (*) By the generall purview of the Statutes, (*) that give the appeal of Rape, the Nief ſhall have an appeal of Rape againſt the Lord. (o) And it ſeemeth by the antient authors of the Law, that this ſo hainous an offence was ſeverely puniſhed by loſs of eyes, and other members, but of old time it was felony, which you may read at large in the ſecond part of the Inſtitutes, W. 1. c. 13.

(*) W. 1. c. 13. W. 2. c. 35 3 E. 2. c. 6. 11. H. 4. cap. 13. 1. E. 4. cap. 1.

(o) 29. H. 6. tit. Coro 17 Bract. l. 3. fo. 147.

(*) And

(p) And this word Rape which our Author here useth is so appropriated by Law to this case, as without this word (Rapuit) it cannot be expressed by any Periphrasis or circumlocution, for Carnaliter cognovit eam, or the like will not serve. (p) 9. E. 4. 25. Mirror c. 1. Sect. 13.

Sect. 191.

¶ Auxy si un bill' soit fait executr a un auter, & le Sr del villeine suit en dette a le testator en un certaine summe dargent que nest my paie, en ceo case le villeine come executor de le testator avera action de det envers son Seignior, pur ceo que il ne recovera le det a son use demesne, mes al use le testator.

ALso if a Villain be made Executor to another, and the Lord of the Villain was indebted to the testator in a certain summe of mony which is not paid, in this case the Villain as Executor of the testator shall have an action of Debt against his Lord, because he shall not recover the Debt to his own use, but to the use of the Testator.

¶ Of this matter sufficient hath been spoken in this Chapter before. The Villain shall have an Action as Executor against his Lord, and it is no plea for the Lord, to say that the Plaintife is his Villain, for he shall not be infranchised by the user of this action, because he hath it by a gift in Law to the use of the testator, and not to his own use. 21. E. 4. 50. d.

Sect. 192.

Item le Sr ne poit prender hors del possession de tiel villein q est executor les biens le mort, & sil face, le villeine cõe executor avera action de trespasse de mesmes les biens issint prises envers son Sr, & recovera damages al use le testator. Mes en touts tielx cases, il covient que la Sr que est defendant en tielx actions face protestation, q le plaintife est son villein, ou autrement le villeine serra enfranchise, cor.

ALso the Lord may not take out of the possession of such Villain who is Executor, the Goods of the deceased, and if he doth, the Villain as executor shall have an Action for the same goods so taken against his Lord, and shall recover damages to the use of the testator. But in all such cases it behoveth that the Lord which is defendant in such Actions, maketh protestation that the Plaintife is his Villain, or otherwise the Villain shall be infran-

¶ *Le Seignior ne poit prender hors del possession, &c.* Of this also sufficient hath been said before.

¶ *Et recovera damages al use del testator.* (q) Note damages recovered by the Executor in an Action of Trespas shall be assets, and yet they were never in the testator. And so it is in other like cases, as by our Books it appeareth. (q) 21. E. 4. 4. b. 11. H. 6. 35. b. 3. H. 6. 2. 2. H. 4. 21. 1. H. 4. 6.

(r) If an Executor hath a Villain for years, and the villain purchases lands in fee the Executor entreth, he shall have the whole fee simple, but because he had the villain in autre droit, viz. as Executor to the use of the dead, it shall be assets in his hands. Note a diversity between the quantity of the Estate, and the quality of it, for the Law respecteth not the quantity of the state, for not only (r) Doct. & Stud. Brook tit. villenage 70.

(s) Tenant

(f) L. 5. E. 4. 61.

(f) Tenant in taile, and Tenant for life of a Villain shall have the perquisite of the villain in fee, but (t) Tenant for years, and Tenant at will also shall have it in fee.

(t) 21. H. 3. 6. 37.

But the Law respecteth the quality, for in what right he hath the Villain, in the same right shall he have the perquisite, as in the case of the Executor abovesaid, and in the case of the Bishop (u) that hath the Villain in right of his Church, he shall have the perquisite in the same right.

(u) 41. E. 21.

(x) 18. E. 3. 29.

(x) So if a man hath a Villain in the right of his Wife, he shall have the perquisite also in her right. But if the purchase be after issue had, then the Baron shall have the perquisite to him and his heirs, because by the issue he is intituled to be tenant by the Curtesie in his own right.

Vide Sect. 193.
(y) Pl. Com. 276. b. In Grisbroks case.

¶ *Protestation.* (y) Protestatio is an exclusion of a conclusion that a party to an action may by pleading incur, or it is a safeguard to the party which keepeth him from being concluded by the plea he is to make, if the issue be found for him: but in this case without a protestation, albeit the issue be found for the Lord, the Villain shall be infranchised, as it appeareth hereafter in this Section.

Sect. 193.

Brit. fol. 79. 125. b. 126. a

¶ *Ceo serra trie en le Countie, &c.* Be tryed, that is, as it is intended by the verdict of 12. men, that is called in Law a trial triatio.

(a) 7. E. 3. 50. 26. E. 3. 73 38. E. 3. 34. 40 E. 3. 36. 43. E. 3. 4. 31. 44. E. 3. 36. 47. E. 3 26. 22. H. 6. 52. 35. H. 6. 12. 39. H. 6. 24. Vide Sect. 594.

(a) In this case the Law doth favour the villain in the issue, for otherwise by the rule of Law in like cases he ought to answer to the special matter, viz. to the regardancy, but in favour of liberty he may reply that he is free, and of free estate, and consequently this issue concerning the person shall be tryed where the Writ is brought. (b) The like Law it is, if issue be joyned upon the Ideocy of the Plaintife or Defendant, it shall be tryed where the Writ is brought, because it concerneth the person.

(b) 2. Mar. Dict. 112.

¶ *In favorem libertatis.* It is commonly said that three things be favoured in Law, Life, Liberty, Dower.

(c) Fortescue c. 42.

(c) Impius & crudelis judicandus est qui libertati non favet: Angliæ jura in omni casu libertati dant favorem.

Tryal is to find out by due examination the truth of the point in issue or question between the parties, whereof

¶ Item si villeine fuist un action de trespasse, ou un auter action envers son Sir en un County, & le Sir dit q̄ il ne serra respondus, pur ceo q̄ il est son villein regardant a son manor en auter County, & le Plaintife dit que il est franke & de franke estate, & nemy villeine, ceo serra trie en le County lou le Plaintife avoit conceive son action, & nemy en l' county lou le manor est, & ceo est in favorem libertatis, & pur cel cause un estatute fuit fait an. 9. R. 2. cap. 2. le tenor de quel ensuist en tiel forme. Item pur la ou pluiors villeins, & Niefes, sibien des graundes Seigni-

ALso if a Villain ifsueth an action of trespas or any other Action against his Lord in one County, and the Lord saith that he shall not be answered because he is his Villain regardant to his Mannor in another County, and the Plaintife saith that he is free, and of a free Estate, and not a Villain, this shall be tried in the County where the Plaintife hath conceived his Action, and not in the County where the Mannor is, and this is in favour of liberty. And for this cause a Statute was made *anno* 9. *R.* 2. *c.* 2. the tenor whereof followeth in this form. Also for that where many Villains and Niefs,

ors, come des auters gentes, ſibi eſpirituals come temporals ſenſuent, deins cities, villes, & lieux enfranchiſe, come en la Citie de Londres, & auters ſemblables, & feignont divers ſuits envers lour Sñrs, a cauſe de eux fait franks per le reſpons de lour Sñrs: Accorde eſt & aſſentus, q̃ les ſeigniors, ne auters, ne ſoyent my forbarres de lour villeines per cauſe de lour reſpons en ley. Per force de quel eſtatute, ſi aſcun villeine voylloit ſuer aſcun maner de action a ſon uſe demeſne en aſcun County, ou il eſt fort a trier envers ſon Seignior, l' Sñr poyt eſſyer de pleader que le plaintife eſt ſon villeine, ou de faire proteſtation que il eſt ſon villeine, & de pleder ſon auter matter en barre. Et ſi ils ſont a iſſue, & iſſue ſoit troue pur le Sñr, donqz l' villeine eſt villeine come il fuit devant per force de meſme leſtatute. Mes ſi le iſſue ſoit troue pur le villeine, donque le villeine eſt franke, pur ceo que le

aſwell of great Lords as of other men, as well of Spiritual as temporal flye and go into Cities, Towns, and places franchiſed, as into the City of London and other like places, and feign divers Suits againſt their Lords, becauſe they would make themſelves free by the anſwer of their Lords. It is accorded and aſſented, that Lords nor others ſhall not be forebarred of their Villains by reaſon of their anſwer in law. By force of which ſtatute, if any Villain will ſue any manner of action to his own uſe in any County where it is hard to tryagainſt his Lord, the Lord may chuſe whether he will plead that the plaintiff is his villain, or make proteſtation that he is his Villain, and plead his other matter in bar. And if they be at iſſue, & the iſſue be found for the Lord, then the villain is a villain as he was before by force of the ſame ſtatute. But if the iſſue be found for the villain, then the villain is free, becauſe

upon judgment may be given. And as the queſtion between the parties is two-fold, ſo is the trial thereof: for either it is queſtio juris, (and that ſhall be tried by the Judges either upon a Demurrer ſpecial verdict or exception, for Cuilibet in ſua arte perito eſt credendum: & quod quiſque norit in hoc ſe exerceat, and it is commonly and truly ſaid, Ad quæſtionem juris non reſpondent juratores) or it is quæſtio facti. And the trial of the fact is in divers ſorts, whereof a light touch is given before. Section 102. of theſe a trial by twelve men (here intended by Littleton) is the moſt frequent and common: And ſome few rules of of Law are neceſſary here to be remembred (for the better underſtanding of the Books of Law hereafter) where and from what place, viz. De quo vicineto, out of what neighborhood the Jury ſhall come, a neceſſary point to be known, for if there be a miſtrial, (that is) if the Jury cometh out of a wrong place, or returned by a wrong Officer and give a verdict, judgment ought not to be given upon ſuch a Verdict. (d) Wherein the moſt general rule is, that every tryal ſhall be out of that Town, Pariſh, or Hamlet, or place known out of the Town, &c. within the Record, within which the matter of fact iſſuable is alledged, which is moſt certain and neareſt thereunto, the Inhabitants whereof may have the better and more certain knowledge of the fact: as if the fact be alledged in quadam platea vocat' Kingſtreet in Civitate Weſtm. in Com' Midd. in this caſe the Wiſne cannot come out of Places, becauſe it is neither Town, Pariſh, Hamlet, nor place out of the neighborhood whereof a Jury may come by Law, but in this caſe it ſhall not come out of Weſtminſter, but out of the Pariſh of Saint Margaret, becauſe that is the moſt certain. But

Vide Sect. 234.

Vide Sect. 102.

Vide Sect. 234. more of this matter.

(d) 3.E.3.73.20.H.6.30 7.H.4.27. 9.H.5.8. 8.H.6.34. 7.H.6.27. 17.E.3.56. 43.E.3.5. 47.E.3.6. 34.H.6.1.

Seignior ne pist al commencement pur son plee q̄ le villeine fuit son villeine, mes ceo pist per protestation, &c.

that the Lord took not at the beginning for his Plea that the Villain was his Villain, but took this by protestation, &c.

therein also it is to be noted, that if it had been alledged in Kingstreet in the Parish of St. Margaret in the County of Middlesex, then should it have come out of Kingstreet, for then should Kingstreet have been esteemed in Law a town: (e) for whensoever a place is alledged generally in pleading (without some addition to declare the contrary, as in this case it is) it shall be taken for a town. (f) And albeit Parochia generally alledged is a place incertain, and may (as we see by experience) include divers towns, yet if a matter be alledged in Parochia, it shall be intended in Law that it containeth no more towns then one, unless the party doth shew the contrary. (g) But when a parish is alledged within a City, there without question the Visne shall come out of the parish, for that is more certain then the City.

(h) If a trespass be alledged in D. and nul tiel ville is pleaded, the Jury shall come out de corpore comitatus, but if it be alledged in S. and D. and nul tiel ville de D. is pleaded, the Jury shall come out de Vicineto de S. for that is the more certain. So if a matter be alledged within a Mannor, the Jury shall come de Vicineto manerii, but if the Mannor be alledged within a town, it shall come out of the town, because that is most certain, for the Mannor may extend into divers towns. And all these points were resolved by all the Judges of England, upon conference between them in the case of John Arundel Esquire, indicted for the death of William Parker. *

(i) In a real action where the Demandant demands land in one County, as heir to his father, and alledges his birth in another County, if it be denied that he is heir, it shall not be tryed where the birth was alledged, but where the land lieth, for there the Law presumes it shall be best known who is heir. But if the Defendant make himself heir to a woman, for that is the surer and more certain side, and the mother is certain, when perhaps the father is incertain, and therefore there it shall be tried, where the birth is alledged, because they have more certain conusance then where the land lieth. And so it is where generally bastardy is alledged, the trial shall be in like case Mutatis mutandis. (k) If a man plead the Kings Letters Patents, and the other party plead Non concessit, it shall not be tried where the Letters Patents bear date, for they cannot be denied, but where the land lieth.

Every trial must come out of the neighbourhood of a Castle, Mannor, Town or Hamlet, or place known out of a Castle, Mannor, Town, or Hamlet, as some Forests and the like, as before and by the Authorities thereupon quoted appeareth.

Every plea concerning the person of the Plaintiff, &c. shall be tried where the Writ is brought, as it appeareth before.

When the matter alledged extendeth into a place at the Common Law, and a place within a Franchise, it shall be tried at the Common Law.

(l) In an action against two, the one pleads to the Writ, the other to the action, the plea to the Writ shall be first tried, for if that be found, all the whole Writ shall abate, and make an end of the business.

(m) In a plea personal against divers Defendants, the one Defendant pleads in bar to parcel, or which extendeth only to him that pleadeth it, and the other pleads a plea which goeth to the whole, the plea that goeth to the whole, (that is) to both Defendants, shall be first tried, and of this opinion was Littleton in our books, for the trial of that goeth to the whole, and the other Defendant shall have advantage thereof, for in a personal action the discharge of one is the discharge of both. As for example, if one of the Defendants in trespass plead a release to himself, (which in Law extends to both) and the other pleads not guilty (which extends but to himself) or if one plead a plea which excuses himself only, and the other plead another plea, which goeth to the whole, the plea which goeth to the whole shall be first tried, for if that be found it maketh an end of all, and the other Defendant shall take advantage hereof, because the discharge of one is the discharge of both: but in a plea real it is other wise, for every Tenant may lose his part of the land: (n) as if a Precipe be brought as heir to his father against two, and one plead a plea which extendeth but to himself, and the other pleads a plea which extends to both as bastardy in the Demandant, and it is found for him, yet the other issue shall be tryed, for he shall not take advantage of the plea of the other, because his jointenant may lose his part by his misplea. (o) But where an issue is joyned for part, and a Demurrer for the residue, the Court may direct the tryal of the issue, or judge the Demurrer first at their pleasure.

(p) If a Venire fac. be awarded to the Coroners where it ought to be to the Sheriff, or the Visne cometh out of a wrong place, yet if it be Per assensum partium, and so entred of Record it

(e) 4.E.3.30.8.E.3.68. 39.H.6.13. Brooke pleading 61.
(f) 4.E.4.41. 5.E.4.20. 22.E.4.2. 35.H.6.30. 22.H.6.47. lib.1. 162. Digges case lib.11. f.25. lib. 6. fo. 14.
(g) 1. E.3.8. 7.H.6.38.
(h) 22.E.4.11. vise F.27 6.H.7.3.b.11.H 2.7.22.b 9.E.4.3.2. 3.E.4.26. 39.H.6.trelp.93. 4.E.3. 30.
(*) Lib.6.f.14.Arundels case.
(i) 43.E.2.5.2. 46.E.3.6. & 7. Gernons case. 18.E.3.58.11.H.4.56.b. 57. 17.E.3.36.b.39. Ass.10. 38.Ass.30. 35.Ass.7.
(k) Mich.31. & 32.Eliz. Rot. 365. in the Kings Bench inter Edan & Frankline adjudg 3.Mar. Dier 129.18. Eliz. Dier 353.17.Eliz.Dier.342.
(l) 8.E.4.24.9.H.6.46.47 21.H.6.4. 18. Ass.7. 30.E.3.16.17.7.E.4.31. 27.H.8.30.11.H.4.68.
(m) 15. E. 4.25.b. 9.H.6.46.26.E.3. 7.E.4.31.39.E.3.16.17.
(n) 9. H. 6.46. 39.E.3.16.17.
(o) Lib. 10. fo. 54. and the Books there cited.
(p) Mich.21. & 22.Eliz. Dier 367.Lib.5.fo.36.b. Bainhams case. 39.E.3.2.b. 44.E.3.6.11.H.6.12.l.5 fol. 40.Dormers case.

it ſhall ſtand; for Omnis conſenſus tollit errorem, and thus much of theſe excellent points of learning: and if you deſire to know the inſtitution and right uſe of this trial by 12. men, and of the antiquity thereof, and more of this matter, read the 234. Section hereafter, which is worthy of your obſervation. Vide Sect. 234.

¶ *Eſtatute.* O ſtature, This cometh of the Latin word Statutum, which is taken for an Act of Parliament made by the King, the Lords and Commons, and is divided into two branches, general and ſpecial. This Statute here mentioned is a general Statute, and is darkly and obſcurely penned. vide 25.E.3. c.18. F.N.B. 77. c. 26. E 3.73.

¶ *Et ſils ſont a iſſue.* (q) Iſſue, exitus, a ſingle, certain, and material point iſſuing out of the allegations or pleas of the Plaintiff and Defendant, conſiſting regularly upon an affirmative and negative to be tried by twelve men, and it is twofold, a ſpecial iſſue, as here in the caſe in Littleton, or general, as in treſpaſs, not guilty: in aſſiſe, nul tort, nul diſſeiſin, &c. And as an iſſue natural cometh of two ſeveral perſons, ſo an iſſue legal iſſueth out of two ſeveral allegations of adverſe parties. (q) Vi. ſect. 414. 7.H.6.43 9.E.4.36.36.H.6.15. 5.E.4.26. 11.H.4.79.

And to make our Books more eaſie to be underſtood concerning this point, it is good to ſet down ſome neceſſary rules (among many other) concerning joyning of iſſues. An iſſue being taken generally referreth to the Count, and not to the Writ: As in an account the writ chargeth him generally to be his receiver, the Count chargeth him ſpecially to be his receiver by the hands of T. the Defendant pleadeth that he was never his receiver in manner and form, &c. this ſhall refer to the Count, ſo as he cannot be charged but by the receipt by the hands of T. 7.E.3.34.

(r) A ſpecial iſſue muſt be taken in one certain material point which may be beſt underſtood, and beſt tried. (r) 20 E.3. iſſue 31. 22 Ed. 4.28. 8.E.3.8.9.H.6.18. 38.E 3.33.

(ſ) An iſſue ſhall not be taken upon a negative pregnant, which implieth another ſufficient matter, but upon that which is ſingle and ſimple, as Ne dona pas per le fait, implys a gift by deed, therefore the iſſue muſt be Ne dona pas modo & forma. (ſ) 21.H.6.9.b.16.E.4.5 24.E.3.32.33.75 31.E.3 Iſſue 17.13.E.3 lb.27. 21.E.3.49. 30.E.3.8.

(t) An iſſue joyned upon an Abſque hoc, &c. ought to have an affirmative after it: two affirmatives ſhall not make an iſſue, unleſs it be leſt the iſſue ſhould not be tried. 10.E.3. 32. 22.E.3.23. 18.E.3 Iſſue 35.5.H.7.8

(u) Some iſſues be good upon matter affirmative and negative, albeit the affirmative and negative be not in preciſe words, as in debt for rent upon a leaſe for years, the Defendant pleads that the Plaintiff had nothing at the time of the Leaſe made, the Plaintiff replyeth that he was ſeiſed in fee, &c. this is a good iſſue. 31. Aſſ. 25.12.E.4.4.4.8. 2.H.4.23.38.H.6.22. 40.E.3.5. 5.E.3.24. (t) 18.El. Dyer 253.

(w) Where the iſſue is joyned of the part of the Defendant, the entry is Et de hoc ponit ſe ſuper patriam, but if it be of the part of the Plaintiff, the entry is Et hoc petit quod inquiratur per patriam. 22 H.6.19.32.H.6.23. 2R.3.6.H.7.5.11.H.4.79 (u) 2.H.7.4. 5.H.7.12. 26.11.H.4 83.6.E.4.6.b

(x) There be ſome negative pleas, that be iſſues of themſelves, whereunto the demandant, or Plaintiff cannot replye, no more than to a generall iſſue which is, Et prædictus A. ſimiliter. As if the Tenant do Vouch, and the Demandant counterplead that the Voucher or any of his Anceſtors had any thing, &c. whereof he might make a Feoffment, he ſhall conclude, Et hoc petit quod inquiratur per patriam, & prædictus tenens ſimiliter. So in a fine pleaded by the Tenant, &c. the Demandant may ſay, Quod partes finis nihil habuerunt, & hoc petit quod inquiratur per patriam & præd' tenens ſimiliter. And ſo in a Writ of Dower, the Tenant plead Unques ſeiſie que dower, he ſhall conclude, Et de hoc ponit ſe ſuper patriam, & præd'. perens ſimiliter, and ſo in many other caſes, and of this opinion was Littleton in our Books. (y) A man leaveth his Wife enſeint with a child, iſſue ſhall not be taken that ſhe was not enſeint by her Husband on the day of his death, for Filiatio non poteſt probari; but the iſſue muſt be whether ſhe was enſeint the day of his death. 26.H.8. Dyer 6. in Formedon. 28.H.8 Dyer 31. 18.H.6. 8.9 15.E.4.32.32.H.6.25 7.H.6 27.43.Aſſ.4. 9.E.4.36.Pl.Com.172.a 36.H.6.15. (w) 26.H 8.3. 18.E'.Dyer 353. x) 22.H.6.57.59.33.H.6 21.3.H.7.9.12.E.4.13. 17.E.3.53.77 78.22.E.3 16.17.24.E.3.50. 40.E.3.19. (y) 41.E.11.b.

(z) A proteſtation abateth not the party that taketh it, if the iſſue be found againſt him, and therefore if the iſſue be found for the Villain, he is infranchiſed for ever. And yet in ſome ſpecial caſe albeit the iſſue be found againſt him that maketh the proteſtation, yet he ſhall take benefit of his proteſtation, (*) as if a man entreth into warranty, and taketh by proteſtation the value of the Land, albeit the plea be found againſt him, yet the proteſtation ſhall ſerve him for the value. (z) 10.E.4.Proteſt.5. 10.E.4.12.32.Aſſ.9. 30.E.3.14.9.H 6.59. Vide Sect. 192. * 30. E.3.14.

Sect. 194.

¶ Item le Sñr ne poit mayner ſon villeine, car ſil mayhema ſo villein, ALſo the Lord may not mayme his Villain. For if he mayme his Villain, ¶ *Mayhemer*, (a) or Mehaigner, a French word of which cometh Mayhim, mahemium, (id eſt) membri mutilatio, (a) Stamf.l.1.c.41. Glanvil.l.14.c.7. Bract.l.3.fol.144.145. Brit.c.25.fol.48.49. Flet.l.1.c.38.

Mirror c.1.Sect.9.

and membrum eſt pars corporis habens deſtinatam operationem in corpore. Mayhemium vero dici poterit ubi aliquis in aliqua parte ſui corporis effectus ſit inutilis ad pugnandum. And the Law hath ſo appropriated this word Mayhem, which our Author here uſeth, to this offence, as mayhemavit cannot be expreſſed by any other word, as mutilavit, truncavit, or detruncavit, or the like.

Vide Sect. 1.

¶ *Il ſerra indite*, or rather endite, and ſo is the original, for it cometh of the French word enditer, and ſignifieth in Law an accuſation found by an Enqueſt of 12 or more upon their oath, and the accuſation is called Indictamentum. And as the Appeal is ever the ſuit of the party, ſo the Indictment is always the ſuit of the King, and as it were his declaration. (b) Some derive it from the Greek word ἐνδείκνυμι to accuſe.

(b) Lamb. Juſt. of Peace

(c) Vide 1. H. 4. 6. b.

¶ (c) *Navera, &c. Appeale de mayhem.* Becauſe in that appeal he ſhall recover but damages, which the Lord after execution might take again, and ſo the judgment inutile and illuſory, and Sapiens incipit à fine. And the law never giveth an action where the end of it can bring no profit or benefit to the Plaintiff. But here it is to be obſerved, that albeit the party grieved can have no action for the Mayhem, yet at the Kings ſuit he ſhall be puniſhed therefore, for the reaſon hereafter expreſſed in this Section. (d) And in antient time there were Appeals de plagis & de impriſonamento, but they are out of uſe and turned to Actions of Treſpaſs.

(d) Fleta l.1.c.4. Brit.cap.25. Bract. 145. Mirror c.5.

¶ *Fine*, finis. Here fine ſignifieth a pecuniary puniſhment for an offence, or a contempt committed againſt the King, and regularly to it impriſonment appertaineth. And it is called Finis, becauſe it is an end for that offence. (e) And in this caſe a man is ſaid Facere finem de tranſgreſſione, &c. cum Rege, to make an end, or fine with the King for ſuch a tranſgreſſion. It is alſo taken for a ſum given by the Tenant to the Lord for concord, and an end to be made. (f) It is alſo taken for the higheſt and beſt aſſurance of Lands, &c.

(e) Regiſt. Judic. 25. Lib. 8. fo. 59. Beechers caſe.

(f) Vid. ſect. 74. 174. 441

Here it is good to ſee what a fine differeth from an amerciament, (g) Amerciamentum in Latin is called miſericordia, for that it ought to be aſſeſſed mercifully, and this ought to be moderated by affeerement of his equals, or elſe a Writ, De moderata miſericordia, doth lie: and thereof Glanvil ſaith thus. (h) Eſt autem miſericordia Domini Regis qua quis per juramentum legalium hominum de vicineto earenus amerciandus eſt, ne aliquid de ſuo honorabili contenemento amittat.

(g) Lib. 8. f. 59. Beechers caſe F.N.B. 76.

(h) Glanvil l. 9. c. 11. Magna Charta c. 14. Fleta l. 2. c. 43. & 60. & lib. 1. c. 43. Bract. l. 3. f. 116.

(i) The cauſe of an amerciament in plea, real, perſonal or mixt (where the King is to have no fine) is for that the tenant or defendant ought to render the demand (as he is commanded by the Kings Writ) the firſt day: which if he do, he ſhall not be amerced. So as for the delay that the tenant or defendant doth uſe he ſhall be amerced. (k) And albeit the amerciament cannot be impoſed, nor the King fully intitled thereunto until judgment be given, becauſe by the judgment the wrong is diſcerned, yet a pardon before judgment, after judgment given, ſhall diſcharge the party, becauſe the original cauſe, viz. the delay, &c. is pardoned. (l) what then if a præcipe be brought againſt an infant, & hanging the plea he cometh of full age? he

(i) 32. E 3. 1. & 2. 14. E. 3. amerciam. 16. 8. R. 2. ibid. 26. &c.

(k) Pl. Com. 401. Coles caſe. 37. H. 6. 21. Lib. 5. fo. 49. Vaughans caſe.

(l) Vaughans caſe ubi ſupra. Beechers caſe ubi ſupra.

il ſerra de ceo endite a le ſuit le Roy, et ſil ſoit de ceo attaint, il ſerra pur ceo un grievous fine et ranſome al Roy. Mes il ſemble que villeine navera pas per le ley un appeal de mayhem enus ſon Sir, Car en appeale de Mayhome home recovera forſq dams, et ſi le villeine en ceo cas recoun dams envers ſon ſeignior, et ent avoit execution, le Sir poit prender ceo que le villeine avoit en execution de le villein, et iſſint le recoverie voide, &c.

he ſhall of that be indicted at the Kings ſuit. And if he be of that attainted, he ſhall for that make grievous Fine and Ranſome to the King. But it ſeemeth that the Villain ſhall not have by the Law any Appeal of Mayhem againſt his Lord, for in Appeal of Mayhem a man ſhall recover but his dammages. And if the Villain in that caſe recover damages againſt his Lord, and hath thereof execution, the Lord may take that the Villain hath in Execution from the Villain, and ſo the recovery is void, &c.

be ſhall be amerced for the delay after his full age. So likewiſe if the Demandant or Plaintiff be Nonſuit, or Judgment given againſt him, he ſhall be likewiſe amerced pro falſo clamore.

(m) And for the payment of this amerciament, the Defendant, or Plaintiff, &c. ſhall find pledges, and thoſe Demandants or Plaintiffs that ſhall find no pledges (as the King, the Queen, an Infant, &c.) ſhall not be amerced. And therefore when ſuch are Demandant or Plaintiff, the Writ ſhall not ſay, Si Rex, &c. fecerit te ſecurum de clamore ſuo proſequendo.

(m) F.N.B. 31 f. 47. c. & 101. a. Bract. l. 4. fo. 254. 17. E. 3. 75. 18. E. 3. 2. Br. tit. amerciam 53. 43. Aſſ. 45, &c.

(n) If a Writ do abate by the act of the Demandant or Plaintiff, or for matter of form, the Demandant or plaintiff ſhall be amerced, but if it abate by the act of God, as by the death of one, where there is two or the like, there ſhall be no amerciament. And to an amerciament, impriſonment belongeth not, as it doth to a fine or ranſom. If you deſire to read more of fines and amerciaments, Vide lib. 8. fol. 38. 39. &c. Greſſyes caſe, & lib. 11. fol. 43 44. Godfreys caſe.

(n) Beechers caſe l. 8. fol. 60. b.

(o) It is to be known that Wit, Wita, is an old Saxon word, and ſignifieth an amerciament, as Fledwite an amerciament for fleeing or being a fugitive, and ſo is Flemiſwite, Bloodwite an amerciament for drawing of blood, Herdwite concerning warfare, and ſo Letherwite, Childwite, Wardwite, and the like. Sometime it ſignifieth forfeiture, ſometime freedom, or acquital.

(o) Fleta l. 1. c. 43. Stat. de expoſit. verborū.

(p) And Bote is alſo an antient Saxon word, and ſometime ſignifieth amerciament, or compenſation, as Theftbote, Manbote, or freedom from the ſame, as Brigbote, Caſtlebote, Burghbote.

(p) Lamb explication of Saxon words. Leges Inæ. c. 19.

Wera or Were (q) ſometime ſignifieth an amerciament or compenſation, but properly Wera Anglice idem eſt in Saxonis lingua vel pretium vitæ hominis appretiatum. Which and the like words you ſhall often read in antient Charters.

(q) Lamb ubi ſupra, & Fleta l. 1 c. 43.

¶ *Ranſome.* (r) Redemptio is here taken for a grand ſumme of money for redeeming of a great Delinquent from ſome heynous crime, who is to be captivate in priſon until he payeth it, ſome hold it to amount to his whole eſtate, and others hold that ranſome is a treble fine. (s) But in legal underſtanding a fine and ranſome are all one, for upon the Statute of Merlebridge cap. 3. upon theſe words Non ideo puniatur Dominus per Redemptionem. (t) The Tenant ſhall not have (where the Lord diſtraineth within his fee where nothing is behind) an Action of Treſpaſs quare vi & armis againſt his Lord, for therein the Lord ſhould be puniſhed by redemption, that is, by fine, and in that action the fine is very ſmall. And this is manifeſt by many authorities in all ſucceſſion of ages. and this appeareth by our Author in this place, for he ſaith, Il ferra pur ceo un grievous fine & ranſome. Where fine and ranſome muſt of neceſſity in his opinion be taken by all one: for if the fine and ranſom were divers, then ſhould the party that mayhemed the Villain pay two ſummes, one for a fine, and another for a ranſome, which never was done. And after a redemption and a fine is taken to be all one, for by the payment of the fine he reprieveth himſelf from impriſonment, that attendeth the fine, and then there is an end of the buſineſs.

(r) Dier 6. Eliz. 232.

(s) See the ſecond part of the Inſtitutes Merlebr. cap. 3.

(t) 5. H. 7. 10. 48. E. 3. 5. 6 41. E. 3. 26. 44. E. 3. 13. 2. H. 4. 4. 11. H. 4. 78. 1. H. 6. 6. 9. H. 7. 14. 8. E. 4. 15. 10. E. 4. 7. 20. E. 4. 3. 21. E. 4. 3. Mich. 17. & 18. Eliz. Bevils caſe lib. 4. fo 11. & 19. f. 76. Combs caſe.

It ſignifieth properly a ſumme of money paid for the redemption of a captive, and is compounded of re and emo, that is to redeem or buy again. And it is to be known, that (u) by the antient Law of England, if the defendant in an Appeal of Mayhem had been found guilty, the judgment againſt the defendant had been, that he ſhould loſe the like member, that the Plaintiff loſt by his means, as if the Plaintiff had loſt an hand, the Defendant alſo ſhould loſe one, & ſic de cæteris, in reſpect whereof the Writ ſaid, (w) Felonice mayhemavit, for that the Defendant ſhould loſe a member.

(u) 40. aſſ. 9 Mirror c. 4. & c. 5. Sect. 18. Britton c. 25 fo. 48. Bract. l. 3. fol. 144, 145. Fleta l. 1. c. 38.

(w) Bract. ubi ſupra. Britt. c. 3. fo. 77. b.

Always at the Common Law, when the Defendant ſhould loſe life or member, the Writ ſaid Felonice, &c. And now albeit the Law be changed (for at this day, the Plaintiff ſhall, as our Author ſaith, recover but damages) yet the Writ of appeal ſaith ſtill Felonice.

More the life & members of every ſubject are under the ſafeguard & protection of the King, for as Bracton (x) ſaith, Vita & membra ſunt in poteſtate Regis. And therewith agreeth a notable Record, Paſch. 19. E. 1. coram Rege Rot. 36. Northt. vita & membra ſunt in manu Regis, to the end that they may ſerve the King and their Country when occaſion ſhall be offered. May, the Lord of the Villain for the cauſe aforeſaid cannot mayheme the Villain, but the King ſhall puniſh him for mayheming of his ſubject (for that thereby he hath diſabled him to do the King ſervice) by fine, ranſom, and impriſonment until the fine and ranſom be paid. So as there is a manifeſt diverſity between a ranſom and an amerciament. For ranſom is ever when the law inflicteth a corporal puniſhment by impriſonment, (ſo is alſo a fine) but otherwiſe it is of an amerciament as hath been ſaid. And (y) Antients have ſaid that Ranſome neſt lorique redemption de paine corporel per fine des deniers. This offence of Mayhem is under all felonies deſerving death, and above all other inferior offences, ſo as it may be truly ſaid of it, that it is, Inter crimina majora minimum, & inter minora maximum. And in my Circuit in Anno 11. Jacobi Regis, in the County of Leiceſter one Wright a young ſtrong and luſty Rogue,

(x) Bract. l. 1. fo 6. Paſch. 19. E. 1. coram Rege. Rot. 36. Northt.

(y) Mirror c. 5. ſect. 1. & 2.

Rogue, to make himſelf impotent, thereby to have the more colour to beg or to be relieved without putting himſelf to any labour, cauſed his companion to ſtrike off his left hand, and both of them were indited, fined, and ranſomed therefore, and that by the opinion of the reſt of the Juſtices for the cauſe aforeſaid.

¶ *Voyde, &c.* Here by (&c.) is implyed a maxim in Law, Quod inutilis labor & ſine fructu non eſt effectus legis. And again, Non licet quod dispendio ſicet. And, Sapiens incipit à fine, and Lex non præcipit inutilia. (z) Therefore the Law forbiddeth ſuch recoveries whoſe ends are vain, chargeable, and unprofitable.

(z) Vide Sect. 273. & 578

Sect. 195.

¶ *Demaundant*, pertens, Is he which is Actor in a real action, becauſe he demandeth Lands, &c. and Plaintife, querens in actions perſonal and mixt, quia queritur de injuria, &c. Tenant, tenens in real actions, and defendant, defendens in actions perſonal and mixt.

¶ *Defence.* Cometh of the word defendo, ſo called of the manner of the pleading, viz. prædict' A. B. defendit vim & injuriam, &c.

For example, in a perſonal action brought by A. B. againſt C. D. the defence is, & prædictus C.D. defendit vim & injuriam quando, &c. & damna, & quicquid quod ipſe defendere debet, &c.

In this defence there be three parts to be conſidered, Firſt, when he defendeth the wrong and the force, this hath a double effect, viz. to make himſelf party to the matter, and this is the reaſon, that the defendant in this and the like actions can plead no plea at all before he makes himſelf party by this part of the defence, as it appeareth here by Littleton, that (a) if the defendant will plead in diſability of the perſon of the Plaintiff, he muſt firſt make himſelf party by this firſt part of the defence. Neither can he plead to the juriſdiction of the Court without this part of the defence. Secondly (b) By the defence of the Damages, he affirmeth that the Plaintiff is able to ſue, and (upon juſt cauſe) to recover damages. Thirdly, and by the laſt part, viz. and all that which he ought to defend, when and where he ought, he affirmeth the juriſdiction of the Court. Et ſic de ſimilibus. And of ſuch neceſſity is it for the Tenant or Defendant to make a lawful defence, as (c) albeit he appeareth and pleads a ſufficient bar without making defence, yet judgment ſhall be given againſt him.

¶ Item ſi un Villein ſoit demandant en actiõ real, ou plaintife en actiõ perſonal, vers ſon ſeñr, il le Señr voile plede en diſabilitie de ſon perſon, il ne poit faire plein defence, mes il defẽdera forſqz tout le force & demandera iudgement ſil ſerra reſpõdus, & monſtre ſon matter maintenant, comẽt il eſt ſon villein, & dõera iudgment ſil ſerra reſpondus.

ALſo if a Villain be demandant in an action real, or plaintiff in an action perſonal againſt his Lord, if the Lord will plead in diſability of his perſon, he may not make plain defence, but he ſhall defend but the wrong and the force, and demand the judgment if he ſhall be anſwered, and ſhew his matter by and by how he is Villain, and demand judgment if he ſhall be anſwered.

a) 40.E.3.36.14.H.6.18 35.H.6.12.1.E.4.15.

(b) 29.E.3.23.8. H.6.3.

(c) 36.H.6.judgment 58.

(d) If Villenage be pleaded by the Lord in an action real, mixt or perſonal, and it is found that he is no Villain, the bringing of a Writ of Error is no infranchiſement, becauſe thereby he is to defeat the former judgment, and if in the mean time the Plaintiff or Demandant bring an action againſt the Lord, he need make no proteſtation, ſo long as the Writ remains in force, for at that time he is free, but the Lord ſhall be reſtored to all by a Writ of Error.

(d) 18.E.4.6. & 7.

Sect. 196.

¶ *UN eſt lou Villein ſuiſt action &c.* Littleton here

(e) Bract. lib. 5. fo'. 421. Britton c. 49. fol. 125. Mirror c. 2. Sect. 16.

¶ Item 6. maners de homes y ſont queux ſils ſuont ac-

ALſo there are ſix maner of men who if they ſue judgment

tion

tion, iudgement poit eſtre demand ſils ſerrõt reſpondus, &c. Un eſt, lou villeine ſuiſt action envers ſon Seignior, come en le cas avantdit.

may be demanded, if they ſhall be anſwered, &c. One is where a Villain ſueth an Action againſt his Lord, as in the caſe aforeſaid.

rehearſeth 6 kind of diſabilities of the perſon, diſabling him to ſue any action real, perſonal or mixt. 13.H.4.Suerty 12. a Gardian ſhall diſable

¶ *Sils ſerrõt reſpondus.* This is the legal concluſion of the Plea, when the Plea is in diſability of the perſon. And of the verb reſpondere came reſponſalis often uſed in the antient Authors of the Law. (f) Reſponſalis was he, that was appointed by the Tenant or Defendant, in caſe of extremity and neceſſity, to alledge the cauſe of the parties abſence, and to certifie the Court upon what tryal he will put himſelf, viz. the Combate or the Country. So as his power was more then the Eſſoignor which caſteth an Eſſoigne only to excuſe the abſence of the party, as an eſtranger which caſteth a protection, doth. For by the Common Law, the Plaintiff or Defendant, Demandant or Tenant could not appear by Attorny without the Kings ſpecial Warrant by Writ or Letters Patents, but ought to follow his Suit in his own Proper perſon (by reaſon whereof there were but few Suits) (g) Abuſion eſt a receiner attorny ſans breve de la Chancerie. And therefore Bracton ſaith truly, (h) Attornatus hæc omnia facere poteſt (that is, plead all manner of pleas) Eſt igitur magna differentia inter Attornatum & Reſponſalem. So as the Statutes that give the making of Attorneys, have worn out Reſponſales. Now what manner of men Attorneys ought to be, or rather what they ought not to be, hear what Antiquity hath ſaid. (i) Attorneyes poient eſtre tours ceux aux queux ley voile ſuffer, feme ne poiēt eſte Attorneyes, ne enfans, ne ſerfs, ne nul que eſt ē garde ou autrement faut de foy, ne nul criminous, ne nul eſſoigne, ne nul que neſt a le foy le Roy, ne nul que ne poet eſte Counter, &c.

(f) Bract. lib. 4. f. 212. b. & lib. 5. fol. 349. Fleta l. 6. c. 11. Glanvil lib. 11. cap. 1. Britton cap. 126. Vide W. 1. c. 43. F.N.B. 25. C. Regiſt. 9.

(g) Mirr. c. 5. ſect.

(h) Bracton ubi ſupra.

(i) Mirror c. 2. ſect. 22.

Sect. 197.

¶ Et ii. eſt lou un home eſt utlage ſur action d̃ det, ou Treſpas, ou ſur aũt act, ou Indictment, le Tenant ou defendant poit monſtre tout le matter de record, & utlagarie, & demaunde iudgement ſil ſert reſponduе, pur ceo que il eſt hors de la ley de ſuer aſcun action durant le temps que il ſoit utlage.

THe 2. is, where a man is outlawed upon an action of debt or treſpaſs, or upon any other action or indictment, the tenant, or the defendant may ſhew all the matter of Record and the outlawry, and demand judgment if he ſhall be anſwered, becauſe he is out of the Law to ſue an Action during the time that he is outlawed.

¶ *Et 2. eſt* (k) *lou un home eſt utlage, &c.* But theſe general words receive a diſtinction, viz. (l) if an Executor or an Adminiſtrator ſueth any Action, Utlary in the Plaintiff ſhall not diſable him, becauſe the Suit is in auter droit, that is, in the right of the Teſtator, and not in his own right. And for the ſame reaſon, (m) a Major and Commonalty ſhall have an action though the Major be outlawed. (n) In a Writ of Error to reverſe an Utlary, Utlary in that ſuit, or at any ſtrangers ſuit ſhall not diſable the Plaintiff, becauſe if he in that action ſhould be diſabled, if he were Outlawed at ſeveral mens ſuits, he ſhould never reverſe any of them. (o) In an Attaint Outlary in the Plaintiff cannot be pleaded in diſability of the perſon. (p) Outlary in Cheſter or Durham ſhall not diſable the Plaintiff in any Court at Weſtminſter, &c. (q) Minor vero & qui infra ætatem 12. annorum fuerit, utlagari non poteſt, nec extra legem poni, quia anno ætatem non eſt ſub lege aliqua nec in decenna. (r) He that is abjured the Realm may be diſabled, for that he is extra legem, and yet he is not properly outlawed.

(k) Bract. l. 5. fo. 421. Britton c. 22. fo. 39. Mirr. c. 3. de exceptions a provors ca. 4. defaults puniſhable.

(l) 21.E.4.49.b. 21.H.6.30.b.14.H.6.15

(m) 12.E.4. fol. 12.

(n) 7.H.4.40.

(o) 23.H.8.c.3.2.H.7.7

(p) Mirror c. 3. acc. 12.E.4.16.33.H.6.ca.2.

(q) Bract. l. 3. fo. 125. 3.H.5. Utlagary 11. 38.E.3.5.

(r) Britton fo. 39.

¶ *Monſtre tout le matter de record.* Here note two things firſt by this word, (Monſtre) that (ſ) when any man pleads an Utlary in diſability of the perſon, that he muſt ſhew

(ſ) 20. Ed. 2. Coron. 232. 19.Aſſ.p.10.3.H.6.15.b 37.H.6.23.5.H.7. 6.Eliz. Dier 228. F.N.B. 244. Stanf. Pl. Coro. 105.

shew forth the Record of the Outlawry, maintenant sub pede sigilli, (because the Plea is but dilatory) unless the Record be in the same Court. But if he plead an Outlawry in bar, if it be denyed, he shall have a day to bring it in.

(t) 28. Ass. 49. 12. E. 3. Utlagarie. 3. M. 4. & 5. El. Dyer 222. 38. E. 3. 13.

Secondly, (t) before the Defendant can disable the Plaintiff, the Outlawry must appear of Record, and the Judgment after the quinto exactus given by the Coroners in the County Court, is not sufficient, until the Writ of Exigent be returned, and the Outlawry appear of Record: which is manifest by Littletons own words, (viz.) Matter de Record, whereof see more hereafter, Sect. 503.

It is to be observed, That there be two kind of appearances before the Quinto exactus, to avoid the Outlawry, viz. an apparance in deed, that is, to render himself, &c. And the other is by an apparance in Law, (u) that is, by purchasing a Supersedeas out of the Court where the Record is, which is an apparance of Record: and therefore though it be not delibered to the Sheriff before the quinto exactus, yet it shall avoid the Outlawry, and so are the Books that speak hereof to be intended.

(u) Tr. 44. El. in Com. Banc. inter Mere & Dolbury. 33. H. 6. 1. 11. H. 4. 34. Dyer 3. El. 192. 5. El. 223 4. H. 4. 1. cas. 8. H. 4. f. 7 37 H. 6. 17. 33. E. 3. Er. 77 21. H. 6. 20.

(w) If a man be outlawed at the suit of one man, all men shall take advantage of this personal disability. And so it is in case of Alienage, and of Excommengement: but otherwise it is in case of Villenage, for that disability is only given to the Lord.

(w) 33. H. 6. 19. b. &c.

(x) 44. E. 3. 27.

¶ *Durant le temps que il est nilage.* (x) If the Defendant plead an Outlawry in the Plaintiff, in disability of his person, and the Plaintiff after that Plea pleaded, purchase a Charter of Pardon, because the Charter hath restored him to the Law, the Defendant shall answer. So note, the disability abateth not the writ, but disinableth the plaintiff until he obtaineth a Charter of pardon, and so it appeareth here by Littleton.

(y) 9. El. Dyer 262. 7. H. 4. 4. b. Stanf. Pl. Coron. 188. Lib. 5. fo 109. in Foxleys case. 28. E. 3. 92. 19 Ass. p. 47. 63. 30. H. 6. 5

¶ *Fudgement sil serra respondue.* (y) If the ground or cause of the Action be forfeited by the Outlawry, then may the Outlawry be pleaded in bar of the Action, as in an Action of Debt, Detinue, &c. But in real Actions, or in personal, where damages be incertain, (as in Trespass of Battery, of Goods, of breaking his Close, and the like) and are not forfeited by the Outlawry, there Outlawry must be pleaded in disability of the person.

z) Mir. c. 1. sect. 3. & c. 3. & 4. sepe. c. 5. Sect. 1.

(z) And it is to be observed, That in the Reign of King Alfred, and until a good while after the Conquest, no man could have been outlawed but for Felony the punishment whereof was death: but now the Law is changed, as it appeareth by that which hath been said, and hereby you shall understand old Books and Records which say, That an outlawed man had Caput Lupinum, because he might be put to death by any man, as a Wolf, that hateful beast might.

(*) Fleta l. 1. c. 27. Bract. l. 3. fo. 421. Britton fo. 20. b.

(*) Utlagatus & waiviata capita gerunt Lupina, quæ ab omnibus impunè potenunt amputari, merito enim sine Lege perire debent, qui secundum legem vivere recusant. And another saith,

(a) Mir. c. 4. sect. defaults punishable.

(a) Utlage per felonie teigne leu per loup, & est criable Woolfeshered, pur ceo que loupeell beast hay de touts gents, & de ceo en avant list al aseun de le occire ou soer del loup dont custome soloit este de Porter les testes al chiefe lieu del county, ou de la Franchise, & soloit lou avoire dun mark del County pur chescun teste de utlage & de loupe. And this agreeth with the Law before the Conquest,

(b) Lamb. fol. 128.

(b) Utlagatus lupinum gerit caput, quod Anglicè, Woolfs-head dicitur, & hæc est lex communis & generalis de omnibus utlagatis.

(c) 2. Ass. p. 3. 2. E. 3. tit. Coron. 148.

(c) But in the beginning of the Reign of King Edward the Third, it was resolved by the Judges for avoiding of inhumanity, and of effusion of Christian blood, that it should not be lawful for any man but the Sheriff only, (having lawful Warrant therefore) to put to death any man outlawed, though it were for Felony, and if he did, he should undergo such punishments and pains of death, as if he had killed any other man, and so from thenceforth the Law continued until this day. (Now Woolfs-head, and Wulferfod is all one)

* Bracton. l. 5. fo. 421. 8. H. 6 9. b. 44. E. 3. 5. 35. H. 6. 6. 40. E. 3. 2.

* And after in Bractons time, and somewhat before, Process of Outlawry was ordained to lie in all Actions that were Quare vi & armis, which Bracton calleth Delicta, for there the King shall have a Fine. But since, by divers Statutes, Process of Outlawry doth lie in Account, Debt, Detinue, Annuity, Covenant, Action sur le Statute de 5. Rich. 2. Action sur le Case, and in divers other Common or Civil Actions. But now let us hear what Littleton will say unto us.

Sect. 198.

(a) Bract. l. 5. fo. 415. 427 Mir. c. 1. sect. 3. c. 5. sect. 1 & c. 3. except 2 provors. Flet. l. 6. c. 47. Brit. fo. 29 13. E. 3. Bre. 677. 25. E. 3 de Natis ultra mare, 31. E. 3. Cosinage 5. 42. E. 3. 2. 9. E. 4. 7.

¶ *Alien.* (a) Alienigena is derived from the Latin word Alienus, and according

LE 3. est, un Alien que est nee hors de la ligeance

THe third is, an Alien which is born out of the ligeance of

nostre

noſtre Seignior le Roy, ſi tiel alien voile ſuer un Action reall ou perſonall, le Tenant ou Defendant poit dire que il fuit ne en tiel pais, que eſt hors d la ligeance le Roy, & demaund iudgement ſi il ſerra reſpondue.

our Sovereign Lord the King, if ſuch alien will ſue an action real or perſonal, the tenant or defendant may ſay, That he was born in ſuch a County which is out of the Kings Allegeance, and ask Judgement, if he ſhall be anſwered.

to the Etymology of the word, it ſignifieth one born in a ſtange Country, under the Obedience of a ſtrange Prince or Country: (And therefore Bracton ſaith, That this exception, Propter defectum Nationis, ſhould rather be Propter defectum ſubjectionis) or as Littleton ſaith, (which is the ſureſt) Out of the ligeance of the King. Note, here Littleton ſaith not Hors del Realme, but Hors de ligeance; for he may be born out of the Realm of England, 11.H.4.26.14.H.4.19.20 3.H.6.55.22.H.6.38. S.anf.pl.Cor.197.a. Lib.7.fo.1.Calvins caſe. pl.com.268.per Sanders Vid.ſect.1.439.440.441

per within the ligeance. And he that is born without the Kings ligeance is called ſometime a Denizen quaſi deins nee, born within, and thereupon in Latin called Indigena, the Kings Liegeman, for Ligeus is ofter taken for a natural born Subject. But many times in Acts of Parliament, Denizen is taken for an Alien born, that is infranchiſed or denizated by Letters Patents, whereby the King doth grant unto him, (b) Quod ille in omnibus tractetur, reputetur, habeatur, teneatur, & gubernetur, tanquam ligeus noſter, infra dictum Regnum noſtrum Angliæ oriundus, & non aliter, nec alio modo. But the King may make a particular Denization: (c) As he may grant to an Alien, Quod in quibuſdam Curiis ſuis Angliæ audiatur ut Anglus, & quod non repeliatur per illam exceptionem quod ſit alienigena & natus in partibus tranſmarinis, to enable him to ſue only. The ſeveral ſenſes of which word muſt be gathered, ex antecedentibus, adjunctis, & conſequentibus, and they that take him in that ſenſe, derive the word from Donaiſon (i) Donatio, becauſe his freedom is given unto him by the King. (b) 9.E.4. fo. 8. Pl.Com.130.b. (c) Rot. Parl. 22. E.1. Elias de Daubenie.

There is another kind, and that is an Alien naturalized, and that muſt be by Act of Parliament. And this Alien naturalized to all intents and purpoſes, is as a natural born Subject, and differeth much from denization by Letters Patents; for if he had iſſue in England before his denization, that iſſue is not inheritable to his Father: but if his Father be naturalized by Parliament, ſuch iſſue ſhall inherit. So if an iſſue of an Engliſhman be born beyond Sea, if the iſſue be naturalized by Act of Parliament, he ſhall inherit his Fathers Lands; but if he be made Denizen by Letters Patents, he ſhall not, and many other differences there be between them. Contra Morris reading, 196.

¶ *Ligeance.* A Ligando, being the higheſt and greateſt obligation of duty and obedience that can be. Ligeance is the true and faithful obedience of a Liegeman or Subject, to his Liege Lord or Sovereign. Ligeantia eſt vinculum fidei, ligeantia eſt legis eſſentia. Vide Calv. caſe ubi ſupra.

Ligeantia domino Regi debita eſt duplex

- Perpetua.
  1. Originaria, ſive naturalis, ſive nata, (d) and this is always abſolute and incident inſeparable, nemo patriam in qua natus eſt exuere, nec ligeantiæ debitum ejurare poſſit. (d) 13 El. Dier f. 300.b. Doctor Stories caſe.
  2. Data, aut per denizationem, aut per naturalizationem (ut ſupradictum eſt) & iſta ligeantia per denizationem poteſt eſſe ſub conditione.
- Temporanea aut
  - Localis, quia quilibet alienigena qui in hoc Regno ſub protectione Regis degit, Domino Regi ligeantiam debet. And if he be indicted of high Treaſon, the Indictment ſhall ſay, (e) Contra Ligeantiæ ſuæ debitum, & ideo dicitur temporanea & localis, quia non durat niſi quouſque infra Regnum moratur. (e) 3.& 4.P.&M.Di.144 l.7.f.6.&c.Calvins caſe.
  - Limitata, As when one is made Denizen for life or in taile, (f) but one cannot be naturalized either with limitation for life, or in taile, or upon condition: for that is againſt the abſoluteneſs, purity, and indebility of natural Allegiance. (f) 9.E.4.7.Calvins caſe ubi ſupra.

* An Abbot, Prior, or Priorels Alien ſhall have Actions real, perſonal or mixt, for any thing concerning the poſſeſſions or goods of his Monaſtery here in England, though he be an Alien born out of the Kings Ligeance, becauſe he bringeth it not in his own right, * 13.E.3.br.264.20.E.3 Annuity 24. 17.E.3.21. 40.E.3. 10. 27. Aſſ. 48. 14.H.4.37. 22.E.4. 44. 21. H. 7. 7. Stanf.Prær.54. Leſtat. de Carliſle 35.E.1.

but in the right of his Monaſtery, and not in his natural but in his politick capacity.

(h) Bract. 426. 427. 430. 8. E. 3. 51. 5. E. 2. Aiel. 3. 13. E. 3. Bre. 677. 22. E. 3. 14. 20. 21. E. 3. Coſinage 5. 42. E. 3. 2. 13. E. 4. 9. 11. H. 4. 26. 9. E. 4. 7. 15. E. 4. 7. 20. E. 4. 6. 13. E. 4. 9. 10. 32. H. 6. 23. 36. H. 8. Br. Denizen 10. 1. E. 6. Nonhab. Br. 13. & 62. Vide 4. H. 3. Dower 179 6. E. 3. 263. 31. H. 6. ca. 4. Livre de entries in eject. 7. 6. H. 8. Dier 2. 6. H. 7. 15. *29. E. 3. Br. Denizen 15. Vid. Stanf. Pl. Cor. 197. a

¶ *Real ou perſonal.* (h) In this caſe the Lord doth diſtinguiſh between an Alien that is a ſubject to one that is an enemy to the King, and one that is ſubject to one that is in league with the King, and true it is that an Alien enemy ſhall maintain neither real nor perſonal action, Donec terræ ſuæ communes, that is, until both Nations be in peace, but an Alien that is in league ſhall maintain perſonal actions, for an Alien may trade and traffick, buy and ſell, and therefore of neceſſity he muſt be of ability to have perſonal actions, but he cannot maintain either real or mixt actions. An Alien that is condemned in an information ſhall have a Writ of error to relieve himſelf, Et ſic de ſimilibus.

* If an Alien be made a Prior or Abbot, the Plea of Alien nee ſhall not diſable him to bring any real or mixt action concerning his houſe, becauſe he is in autre droit, as before is ſaid.

¶ *Hors del ligeance noſtre ſeignior le Roy.* Here Littleton doth not ſay, out of the Realm, or beyond the Sea, (as he doth Sect 439, 440, 442. 677.) But out of the ligeance; for (as hath been ſaid before) a man may be born out of the Realm, viz. of England, as in Ireland, Jerſey, and Gernſey, &c. and yet ſeeing he is not born out of the ligeance of the King, as Littleton here ſpeaketh, he is no Alien. But hereof there is ſo much, and ſo plentifully ſpoken in our Books, and eſpecially in the caſe of Calvin ubi ſupra, as this ſhall ſuffice.

(i) Livre d' Entries Alien 1.

¶ *Et demaund judgement ſil ſerra reſpondue.* So as the Tenant or Defendant ſhall neither plead Alien nee to the Writ or to the action, but in diſability of the perſon, as in caſe of Villenage and Outlawry before. (i) And Littleton is to be intended of an Alien in league, for if he be an Alien enemy the Defendant may conclude to the Action.

Sect. 199.

¶ *Præmunire.* Some hold an opinion that the Writ is called a Præmunire, becauſe it doth fortifie Juriſdictionem jurium regierum Coronæ ſuæ of the Kingly Laws of the Crown againſt foreign Juriſdiction, and againſt the uſurpers upon them, as by divers Acts of Parliaments appear. But in truth it is ſo called of a word in the Writ, for the words of the Writ be Præmunire facias præfatum A. B &c. quod tunc ſit coram nobis, &c. where Præmunire is uſed for Præmonere, and ſo do divers interpreters of the Civil and Canon Law uſe it, for they are præmuniti that are præmoniti. By the Statutes before quoted in the margent you ſhall perceive what ſtatutes were made before Littleton wrote, and what have been ordained ſince to make offences in danger of a Præmunire.

For Statutes. Vid. 35. E. 1. ſtat. de Carliſle. 25. E. 3 c. 22. 25. E. 3 ſtat. de proviſors. 27. E. 3 c. 1. 38. E. 4. c. 3. 2. R. 2. c. 12. 3. R. 2. c. 3. 12. R. 2. c. 5. 16. R. 2. c. 5. 2. H. 4. c. 3 & 4. 6 H. 4. c. 1. 24. H. 8. c. 12. 25. H. 8. c. 19. 20. 26. H. 8 c. 16. 1. Eliz c. 1. 5. Eliz. c. 1. 13. El. c. 1. 2. 8. 27. Eliz. c. 2. 39. Eliz. c. 18.

For Preſidents. Vid. Mich. 29 E. 3. coram Rege in Theſaur. Paſch. 44. E. 3. ibid. Melbornes caſe. Mich. 38. H. 6. ibid. The caſe of Rich. Beauchamp and others. Hill. 25. H. 8. coram rege The caſe of Nic. Biſhop of Norw. Trin. 36. H. 8. Rot. 9. Coram Rege. The caſe of the Biſhop of Bangor. Mich. 26. & 27 El coram rege, Perrot againſt D. Bevance and others. Book of Entries, f. 429. & 430. & ibid. Mich. 9. H. 7. f. 23.

¶ *Hors del protection le Roy.* The judgment in a Præmunire is that the Defendant ſhall be from thenceforth out of the Kings protection, and his Lands and Tenements, goods and chattels forfeited

Book caſes. 21. E. 3. 40. B. 18. H 6. 6. 9. E. 4. 2. 35. E. 3. 7. 24. H. 8. tit. Præmunire. 16. 1c. H. 4. 12. 27. E. 3. 84. 6. H. 7. 14. 44. E. 3. 36.

¶ Le 4. eſt, un hõe q̃ p iudg. done enbers luy ſur un briefe de Præmunire facias, &c. eſt hors de protection le Roy, ſi il ſuiſt aſcun action, & le Tenant ou le def. mꝛa tout le Recozd enbers luy, il poit demaund iudgement ſil ſerra reſpondu, car la ley le Roy, & les bꝛs le Roy, ſont les choſes per queux home eſt ptect & aide, & iſſint durant l' temps que home en tiel caſ eſt hors de la protection le Roy, il eſt hors de eſtre aide ou ptect per le ley le Roy, ou per bꝛe le Roy.

THe 4. is, a man who by judgment given againſt him upon a Writ of *Præmunire facias, &c.* is out of the Kings protection, if he ſue any action, and the tenant or defendant ſhew all the Record againſt him, he may ask judgement if he ſhall be anſwered, for the Law and the Kings Writs be the things by which a man is protected and holpen, and ſo during the time that a man in ſuch caſe is out of the Kings protection, he is out of help and protection by the Kings Law, or by the Kings Writ.

forfeited to the King, and that his body ſhall remain in priſon at the Kings pleaſure. So odious was this offence of Præmunire, that a man that was attainted of the ſame might have been ſlain by any man without danger of Law, becauſe (k) it was provided by Law, that a man might do to him as to the Kings enemy, and any man may lawfully kill an enemy. But Queen Elizabeth and her Parliament * liking not the extream and inhumane rigor of the Law in that point, did provide that it ſhould not be lawful for any perſon to ſlay any perſon in any manner attainted in or upon any Præmunire, &c. Tenant in tail is attainted in a Præmunire, he ſhall forfeit the land but during his life, for albeit the Statute of 16. R. 2. c. 5. enacteth, that in that caſe their Lands and Tenements, Goods and Chatels ſhall be forfeit to the King, that muſt be underſtood of ſuch an Eſtate as he may lawfully forfeit, and that is during his own life. And theſe general words do not take away the force of the Statute De donis conditionalibus, but he ſhall forfeit all his fee-ſimple lands, ſtates for life, goods and chattels, and ſo was it reſolved in Trugins caſe.

11. H. 7. tit. Præmunire, F. 5. 17. H. 7. Juſt. Sprimans in Turbervils caſe. Kelwey, fo. 195. Doct. & Stud. Lib. 2. cap. 32. Brook, tit. Præmunire, 21 Temps E. 6. Biſhop Barloes caſe.

(k) 24. H. 8. Brook. Coron. 196.

* 5. Eliz. ca. 1.

Hill. 21. Eliz. Trugins caſe reſolved per les Juſtices. 7. H. 4. 20. Simon Beverleys caſe.

¶ *Car laley le Roy & les briefes le Roy, &c.* There be three things as here it appeareth, whereby every ſubject is protected, viz. Rex, Lex, & reſcripta regis, the King, the Law, and the Kings Writs. The Law is the Rule, but it is mute; the King judgeth by his Judges, and they are the ſpeaking Law, Lex loquens. The proceis and the execution which is the life of the Law conſiſteth in the Kings Writs. So as he that is out of the protection of the King cannot be aided or protected by the Kings Law, or the Kings Writ, Rex tuetur legem, & lex tuetur jus. (l) Beſides, men attainted in a Præmunire, every perſon that is attainted of high Treaſon, petit Treaſon, or Felony, is diſabled to bring any action, for he is * Extra legem poſitus, and is accounted in Law Civiliter mortuus.

(l) 4. E. 4. 8. 1. E. 4. 1. b. 30. E. 3. 4. 8. El. Dier 245 * Mich. 9. E. 3. coram rege Rot. 84. Warw.

It is to be underſtood that there is a general protection of the King, whereof Littleton here ſpeaketh, and this extends generally to all the Kings loyal Subjects, Denizens and Aliens within the Realm whoſe offences have not made them uncapable of it, as before it appeareth. And there is a particular protection by Writ, which is one of the Kings Writs that Littleton here ſpeaketh of. The particular protection is of two ſorts, one, to give a man an immunity or freedom from actions or ſuits, the ſecond, for the ſafety of his perſon, ſervants, and goods, lands and tenements whereof he is lawfully poſſeſſed from violence, unlawful moleſtation or wrong. The firſt is of right, and by Law, the ſecond are all of grace, (ſaving one) for the general protection implyeth as much. Of the firſt ſort ſome are Cum clauſula (volumus) ſo called becauſe the Writ hath this word (volumus) in it, viz. Volumus quod interim ſit quietus de omnibus placitis & querelis, &c. And the other a protection Cum clauſula (nolumus) ſo called for the like reaſon. Of Protections Cum clauſula (volumus) for ſtaying of pleas and ſuits there be four kinds, viz. Quia profecturus (ſo called by reaſon they are part of the words of the Writ. 2 Quia moraturus (ſo named for diſtinction for the like cauſe) 3. Quia indebitatus nobis exiſtit of the matter. 4 When any ſent into the Kings Service in War is impriſoned beyond Sea. The former are for ſtaying of actions and ſuits in general. The third is for ſtaying of ſuits of the ſubject for debts and duties due by the Kings debtor to them. Of the fourth you ſhall read hereafter in this place. For the former two theſe nine things are to obſerved. Firſt, for what cauſe they are to be granted. 2. For what perſons they are allowable. 3. A threefold time is to be conſidered, viz. the time of the purchaſe of them, the time of the continuance of them, and the time when they ſhall be caſt. 4. In what place the ſervice is to be performed. 5. In what actions theſe protections are allowable. 6. Under what ſeal and to whom they are directed. 7. Who is to allow or diſallow of them. 8. By whom they are to be caſt, and in what manner. 9. How upon juſt cauſe they may be repealed or diſallowed. I muſt but point at theſe matters to make the ſtudious reader capable of them, and refer him to the Books and other Authorities at large, being excellent points of learning. As to the firſt, it is of two natures, the one concerns ſervices of war as the Kings Souldier, &c. the other wiſdom and counſel, as the Kings Ambaſſadour or Meſſenger Pro negotiis regni, both theſe being for the publick good of the Realm, private mens actions and ſuits muſt be ſuſpended for a convenient time; for, Jura publica anteferenda privatis, and again, jura publica ex privatis promiſcue decidi non debent. (a) And the cauſe of granting of the protection muſt be expreſſed in the protection, to the end it may appear to the Court that it is granted Pro negotiis regni & pro bono publico, (b) or as ſome others ſay, pur le common profit del realme. And Britton ſaid, Noſtre ſervice, i. come eſtre en noſtre force, & le defence de nous & de noſtre people, &c. * A man in execution in ſalva cuſtodia ſhall not be delibered by a protection.

Prote- ction { General. Particular. Of the General, vide l. 5. Calvins caſe per totum.

(a) 39. H. 6. 39. 3. H. 6. tit. protection 2. 13. R. 2. cap. 16.

(b) Mirror c. 3. Sect. Britton 28 i. Fleta lib. 6. cap. 7. 8. &c. Bracton. * 5. Marie Dyer 162.

(c) To the ſecond theſe protections are not allowable only for men of full age, but for men within age, and for women, as neceſſary attendants upon the Camp, and that in three caſes, Quia lactrix, ſeu nutrix, ſeu obſtetrix.

(c) 19. H. 6. 51. 30. E. 3. 21 F. N. B. 28. 1. 11. E. 3. rot. par. 3. part for the Counteſs of Warw.

(d) Corporations aggregate of many are not capable of theſe two protections either Profecturæ, or Moraturæ, becauſe the Corporation it ſelf is indiviſible, and reſteth only in

(d) 30. E. 3. 1. 21. E. 4. 36 21. E. 3. 97.

consideration of Law. (e) Protection for the Husband shall serve also for the Wife.

(f) Albeit the Vouchee, Tenant by reseit, Prier in aid or Garnishee be no parties to the Writ, yet before they appear a Protection may be cast for them, because when the demandant grants the Vouchor or receit, in judgment of Law they are made privy, but if the demandant counterplead the Vouchor or receit, then until it be adjudged for them, and so privy in Law, a Protection cannot be cast for them. And so it is of the Garnishee, a Protection may be cast for him at the day of the return of the Scire fac. (g) No Protection can be cast for the demandant or Plaintiff, because the Tenant or Defendant cannot sue a re-summons, or a re-attachment, but the Plaintiff only that sued out the summons or attachment, &c. must sue also the re-summons or re-attachment And so it is of an actor in nature of a Plaintiff, &c. as the garnishee after appearance, and an abowant, and the like. (h) An Officer of the Kings receit or any other officer in any Court of Record, whose attendance is necessary for the Kings service or administration of Justice being sued, cannot have a Protection cast for him.

(i) In every action or plea real or mixt against two (where a Protection doth lie) a protection cast for the one doth put the plea without day for all. So it is in debt, detinue and account. But in trespass, or any action in nature of trespass, which is in law several, where every one may answer without the other, there a protection cast for the one shall serve for him only, unless they joyn in pleading, or if they plead several pleas, and one Venire facias is awarded against all, there a Protection cast for one, shall put the plea without day for all, and therefore in former times the Plaintiff used to sue out several Venire fac' in those cases for fear of a Protection, &c.

(k) As to the threefold time, First, a Protection proficiscitur, regularly must not be purchased hanging the plea, but this faileth when he goeth in the Kings service in a Voyage royal, and that is twofold, either touching War, and that only is when the King himself or his Lieutenant, that is prorex goeth, or when any goeth in the Kings ambassage. Pro negotio regni, or for the marriage of the Kings daughter, or the like. this also is called a Voyage royal. But a protection Moratur may be purchased, and cast pendente placito.

(l) Regularly a Protection cannot be cast but when the party hath a day in Court, and when if he made default, it should save his default: therefore when execution is to be granted against body, lands, or goods, no protection can be cast, because the Defendant hath no day in Court. If a protection be cast at the Nisi prius for one, if before the day in bank it be repealed by Innotescimus, yet because it was once well cast, it shall save his default, but if the protection be disallowed, either for variance, or that it lay not in the action, or the like, there it shall turn to a default.

If a man hath a protection, and notwithstanding plead a plea, yet at another day of continuance, after that a protection may be cast, so at a day after an exigent, but after appearance he cannot cast a protection in that term until a new continuance be taken.

(n) Thirdly, no protection either Proficiscitur or Moratur, shall indure longer then a year and a day next after the teste or date of it. And so it is of an Essoigne de service le Roy. If a protection bear teste 7. die Januarii, and have allowance pro uno anno, the re-summons, re-attachment or regarnishment may be sued 8 Januarii the next year, and yet that is the last day of the year.

And where Britton treating of an Essoigne beyond the Grecian Sea in a Pilgrimage, &c. saith thus, (o) Ascun gent nequident se purchasent nous letters de protection patents durable a un an, ou a 2. ou a 3. ans, & jalameyns sont attorneys generals, ausi per nous letters patents, & ceux sont bien & sagement, car nul grand Seignior ne chivalier de nostre realme ne doit prender chemen sauns nostre conge, car issint poet le realme remainer disgarny de fort gente.

Three things are hereupon to be observed, First, that this was a protection of grace, whereof more shall be said hereafter. Secondly, that it was for safety of the great men of the Realm, and that they should make general attorneys, so as no actions or suits should be thereby staied. Thirdly, (by the way) that great men could not pass out of the Realm without the Kings licence. (p) A protection granted to one, &c. until he returned from Scotland, was disallowed for the incertainty of the time.

(q) To the fourth, the protection as well Moratur as Proficiscitur must be regularly to some place out of the Realm of England, and that must be to some certain place, as super salva custodia Calicie, &c. and not to Carlisle or Wales, which are within the Realm, or to the like. But it may be to Ireland or Scotland, because they are distinct Kingdoms, or to Calice, Aquitaine, or the like; but a protection, Quia moratur super eum akum mare, will not serve, not only because (as some think) that mare non moratur, but for the incertainty of the place, and for that a great part of the Sea is within the Realm of England.

(r) To the fifth, in some actions Protections shall not be allowed by the Common Law, & in some actions they are ousted by Act of Parliament, Actions at the Common Law, as all Actions that touch the Crown, as appeals of Felony, and appeals of Mayhem. (s) So where

(e) 35.H.6.3.43.E.3.23. 48.E.3. 7. 4. H. 5. protection 107.
(f) 45.E.3. protect.37. 3.H.6. 18.30. 8.H.6.16.9.H.6.36. 40.E.3.18. 32.E.3. protect. 54. 21.E.3. 4.H.4.16. 45.E.3.tit. protect.40. 14. E.3. protect. 66.
(g) 24.E.3.26. 47.E.3.5. 5.H.5.5.38.E.3.1.F.N.B. 28.g.20.R.2. protect.106. 22.H.6.28. 9.H.6.36. 43.E. 3.36.17.E.3.24.25.E.3.43. 24.E.3.26. 13.E.3. protection 71. 24.E.3. ibid. 65. 63. 20. E. 3. ibid. 84.
(h) 7.H.4.3.2.
(i) 19. E.3.protect. 80.81. 32. E.3. ibid.55. 16.E.2. ibid. 77.13.E.3.ibid. 70.41.E.3. ibid.95.41.E.3.32.42.E.3.9. 5.H.5.7.3.H.4.15. 2.R.2. protect.45.43.E.3. ibid.31. 2.H.6.22.21.H.6.41.38. E. 3.12. 7.H.6.21. 33.E.3. protect. 116. 4.H.4.4. 29.E.3. 41.45.E.3.24.28.11.E.4.7. F.N.B. 28. k.
(k) 3.H.6.protect.2.39.H. 6.39.44.E.3.12.13.R.2.ca.16. 3.H.4.16. 11.H.4.7. 7.E.4.27.28. H.6.1. 17. H.6. protect.56. 10.E.3. 54. 13. E. 3. amerciament 18. Lib.7.fol.7.8. Calvins case 13.R.2.c.16.
(l) 4.H.6.22. 17.E.3.76. 33.E.3.tit.protect. 115. 34.E.3.ibid. 124. 27.E.3.79. 29.E.3.protect.85.88. 2.E. 4. 15. 19.E.3.protect.82.79. 13.E.3.ibid.72.9.E.3.21. 3.H.6.55. 4.H.6.22.11.H. 6.14. 14.H.6.22.21.H.6.10. 27.H.6.4.28.H.6.1.35.H.6. 58. 44.E.3.2.16. 48 E.3.8. 7.H.4.5. 14.H.4.23. 27. E. 3. 76.
(m) 22.E.3.4. 16.E.3. protect.47.44.E.3 10.E.3. amerciament 18.34.E.3. Protection 123.
n.) 39.H.6.39.F.N.B. fol.28. Fleta lib.6. c.8. Temps E.1.grand cape 26.
(o) Brit. fo. 282.283.& 280. Fleta l.6. cap. 8. accord.

(p) 1. E.3.25.
(q) Lib.7.fol.8.Calvins case. 7.E.4.29. F.N.B 38.c.g.h. 7.H.4.14.19.H.6.35. 38.H.6.3.32.H.6.3.R.2. Rot.Parliament nu.21.22.E.4. protect.18.3.R.2.ibid.125. 11.H.4.57.Regist.judic.14. 36.H.6.tit.protect.27.6.R. 2.ibid. 14.Regist.orig.88.sæpe.
(r) Bract.l.5.139, 140. Britton 181. Fleta l.6 c. 7 8. &c.14.E.2 protect. 109. 34.E.3.ibid.122.19.E.3. ibid.78.33 E.2. ibid.99. 21. Fo.13.
(s) 10.H.6.protect.105.

where the King is ſole party, no protection is to be allowed in like manner in a decies tantum, where the King and the ſubject are Plaintiffs, but in late Acts of Parliament Protections in perſonal actions are expreſly ouſted. A Protection may be caſt againſt the Queen the Conſort of the King.

In a Writ of Dower unde nihil habet, no protection is allowable, becauſe the Demandant hath nothing to live upon. Otherwiſe it is in a Writ of right of Dower. Likewiſe in a Quare impedit, or aſſiſe of Darreine preſentment a protection lieth not, for the eminent danger of the lapſe. Neither lieth a protection in an Aſſiſe of Novel diſſeiſin, becauſe it is feſtinum remedium, to reſtore the Diſſeiſee to his freehold, whereof he is wrongfully and without judgment diſſeiſed (u) In a Quare non admiſit, a protection is not allowable, becauſe it is grounded upon the quare impedit, and the like in a Certificate upon an Aſſiſe for the like reaſon, and ſic de ſimilibus. A protection, quia profecturus is not allowable (as hath been ſaid) in any Action commenced before the date of the protection, unleſs it be in a Voyage Royal. (w) In Infant is vouched, and at the Pluries venire fac, a protection was caſt for the Infant, and diſallowed, becauſe his age muſt be adjudged by the inſpection of the Court.

(x) By Act of Parliament no protection ſhall be allowed in an attaint. (But at the Common Law a protection for one of the petty Jury had put the plea without day for all) nor in an Action againſt a Gaoler for an eſcape, nor for victuals taken or bought upon the voyage or ſervice, nor in pleas of Treſpaſs, or other contract made or perpetrated after the date of the ſame protection.

(y) In a Writ of Error brought by an Infant upon a fine levied, the Plaintiff ſued a Scire facias againſt the Conuſee, for whom a protection was caſt, and the Court examined the age of the Plaintiff, and by inſpection adjudged him within age, and recorded the ſame, and then allowed the protection, and this can be no miſchief to the Plaintiff, whereupon it followeth, that albeit the Plaintiff dieth afterwards before the fine be reverſed, per after his age adjudged and recorded, his heir ſhall in that caſe reverſe the fine for the nonage of his Anceſtor. (a) And ſo it was reſolved in the caſe of Kekewiche in a Writ of Error brought by him by the opinion of the whole Court of the Kings Bench, otherwiſe it is, if the Plaintiff dyeth before his age inſpected.

(b) Note in judicial Writs, which are in nature of Actions, where the party hath day to appear and plead, there a protection doth lie, as in Writs of Scire facias upon Recoveries, Fines, Judgments, &c. albeit by the Statute of W. 2. Eſſoignes and other delays be ouſted in Writs of Scire facias, yet a protection doth lie in the ſame. So it is in a Quid juris clamat, and the like. But in Writs of Execution, as habere facias ſeiſinam, Elegit, Execution upon a Statute, Capias ad ſatisfaciendum, Fieri facias and the like, there no protection can be caſt for the Defendant, becauſe he hath no day in Court, and the protection extendeth only ad placita & querelas, and muſt be allowed by the Court, which cannot be but upon a day of appearance.

(c) In a Writ of Diſceit brought againſt him that obtained and caſt a protection upon an untrue ſurmiſe in delay of the Plaintiff, that protection is allowable. In an Action brought upon the Statute of Labourers a protection doth lie, & ſic de ſimilibus.

(d) To the ſixth, no Writ of protection can be allowed, unleſs it be under the great Seal, (*) and it is directed generally.

(e) To the ſeventh, the Courts of Juſtice where the protection is caſt, are to allow, or diſallow of the ſame, be they Courts of Record, or not of Record, and not the Sheriff, or any other Officer or Miniſter.

(f) To the eighth, the protection may be caſt either by any ſtranger, or the party himſelf; an Infant, Feme Covert, a Monk, or any other may caſt a protection for the Tenant or Defendant, and this difference there is when a ſtranger caſteth it, and when the Tenant or Defendant caſteth it himſelf. (g) For the Defendant or Tenant caſting it, he muſt ſhew cauſe wherefore he ought to take advantage of the protection, but an eſtranger need not ſhew any cauſe, but that the Tenant or Defendant is here by protection.

(h) As to the ninth, A protection may be avoided three manner of ways: Firſt, upon the caſting of it before it be allowed. Secondly, by repeal thereof after it be allowed: by diſallowing of it many ways, as for that it lieth not in that Action, or that he hath no day to caſt it, or for material variance between the protection and the Record, or that it is not under the great Seal, or the like. (i) Thirdly, After it be allowed by Innoteſcimus, as if any party in the Country without going to the ſervice for which he was retained, obet a convenient time after that he had any protection or repair from the ſame ſervice, upon information thereof to the Lord Chancellor, he ſhall repeal the protection in that caſe by an Innoteſcimus. But a protection ſhall not be avoided by an abetment of the party in that caſe, becauſe the Record of the protection muſt be avoided by matter of as high nature.

(k) There

(t) 39. H. 6. 39. 43. E. 3. 6. & 32. 27. H. 6. 1. F. N. B. 28. 17. E. 3. 23. l. 4. f. 35. Bozoms caſe. Bract. l. 5. to. 139, 140.

(u) 13 E. 3. tit. protection 52. 12. E. 3. ibid. 69. 31. E. 1. ibid. 112.

(w) 19. E. 2. protect. 111. 32. E. 3. ibid. 54.

(x) 23. H. 8. c. 3. 34. E. 1. protection 38. 7. H. 4. c. 4. 1. R. 2. c. 8.

(y) 21. E. 3. 24. 31. E. 3. protect. 97. l. 5. E. 4. 5. c. 35. H. 6. 43. 46. 8. E. 4. 8. 17. E. 3. 22. 13. E. 3. protect. 73.

(a) Paſch. 12. Ja. regis in the Kings Bench.

(b) 13. E. 3. protect. 72. Fleta. l. 2. c. 12. 40. E. 3. 18. 48. E. 3. 18. 19. 37. H. 6. 32. 21. E. 4. 19. 15. H. 7. 8. 47. E. 3. 5. 17. E. 3. 68. 14. E. 3. protect. 64. W. 2. c. 45.

(c) 20 E. 3. protect. 83.

(d) 85. H. 6. 2. Artic. ſup. Cart. 6. 46. E. 3. petition 19.

(*) Lib. 2. f. 17. Lanes caſe. Li. 8. f. 68. Trallops caſe. 20 H. 6. 25. 2. E. 4. 4. 38. H. 6. 23.

(e) 43. E. 3. protect. 96.

(f) 21. E. 4. 18.

(g) 38 H. 6. 23.

(h) 44. E. 3. 12. 47. E. 3. 6.

(i) 13. R. 2. c. 16. 11. H. 4. 7. 7. H. 6. 22. 21. H. 6. 50. 30. H. 6. 3. 19 H. 6. 35. 21. E. 4. 20. 1. H. 6. 6. 42. E. 3. 9. 44. E. 3. 2. 39 E. 3. 4. 5. 20. E. 3. protect 85. 34. E. 3. ibid. 119.

k) 44. E. 3. 4. 12. 47. E. 3. 6. 34. E. 3. protect. 119. 28. H. 6. 3. 34. H. 6. 22. 30. H. 6. 3. 32. H. 6. 4.

(k) There is a clauſe in the Protection to this effect, Præſentibus minime valituris, ſi contingat ipſum, &c. à cuſtodia caſtri prædicti recedere. Or ſi contingat iter illud non arripere, vel infra illum terminum à partibus tranſmarinis redire. Whereupon there be two concluſions to be obſerved.

Firſt, That though the Protection be allowed by the Court for a year, yet if it be repealed by an Innoteſcimus, that the re-ſummons or re-attachment ſhall be granted upon the Repeal, within the year, for the Protection that was allowed had the ſaid clauſe in it. And of that opinion be our latter Books, and the repeal by Innoteſcimus ſhould ſerve for little purpoſe, if the Law ſhould not be taken ſo.

Secondly, That albeit he that had the Protection either Moraturæ or Profecturæ, return into England, and baply be arreſted and in Priſon, yet if he came over to provide Munition, Habilliments of War, victuals or other neceſſaries, it is no breach of the ſaid conditional clauſe, nor againſt the Act of 13 Richard 2. cap. 16. for that in judgment of Law coming for ſuch things as are of neceſſity for the maintenance of the War, moratur, according to the intention of the Protection and Statute aforeſaid. And thus much of the two firſt Protections. Cum clauſula volumus, Profecturæ and Moraturæ.

(l) Regiſtrum 281. b. F. N. B. 28. b. 33. H. 8. c. 29. in the præamble tit. execution 38. 18. E. 3. ibid. 56. 27. E. 3. 88. b. 4. E. 4. 16. 3. El. Dier 197 Rot. pat. 27. E. 3. part 1. m. 2.

(l) As to the third Protection Cum clauſula volumus, the King by his Prerogative regularly is to be preferred in payment of his duty or debt by his Debtor before any ſubject, although the Kings Debt or Duty be the latter, and the reaſon hereof is, for that Theſaurus Regis eſt fundamentum belli, & firmamentum pacis. And thereupon the Law gave the King remedy by Writ of Protection to protect his Debtor, that he ſhould not be ſued or attached until he paid the Kings debt, but hereof grew ſome inconvenience, for to delay other men of their ſuits, the Kings Debts were the more ſlowly paid. And for remedy thereof (m) it is enacted by the Statute of 25. E. 3. that the other Creditors may have their actions againſt the Kings Debtor, and to proceed to Judgment, but not to Execution unleſs he will take upon him to pay the Kings Debt, and then he ſhall have Execution againſt the Kings Debtor for both the two Debts.

(m) 25. E. 3. cap. 19.

n) 41. E. 3. 15. 17. E. 3. 73. 29. E. 3. 13. 4. E. 4. 16.

This kind of Protection hath (as it appeareth) no certain time limited in it. But in ſome caſes the ſubject ſhall be ſatisfied before the King (n) for regularly whenſoever the King is intitled to any fine or duty by the ſuit of the party, the party ſhall be firſt ſatisfied, as in a Decies tantum. And ſo if in action of debt, the Defendant deny his deed, and it is found againſt him, he ſhall pay a fine to the King, but the Plaintiff ſhall be firſt ſatisfied, and ſo in all other like caſes. And ſo it is in Bills preferred by Subjects in the Star Chamber, there coſts and damages (if any be) ſhall be anſwered before the Kings fine, as it is daily in experience.

(o) Regiſt. ſæpe. F. N. B. 28. c.

The fourth protection, Cum clauſula volumus, is when a man ſent into the Kings Service beyond Sea is impriſoned there, ſo as neither protection, Profecturæ or Moraturæ, will ſerve him, and this hath no certain time limited in it, (o) whereof you ſhall read at large in the Regiſter, and F. N. B.

(p) Vide l. 7. fo. 8. 9. Calvins caſe. (q) Regiſter 280. &c. F. N. B. 29. A. B. C. D. E. F. G. H. Regiſter 280. Statute de 14. E. 3. F. N. B. 30 A.

(p) Now are we at length come to protections, Cum clauſula Nolumus, all which ſaving one, are of grace, and as hath been ſaid are implied under the general Protection, for as Fitzherbert ſaith, every loyal Subject is in the Kings protection. Of theſe protections of grace you ſhall not read much in our year Books, becauſe they ſtayed no Actions or Suits. (q) Of the divers forms of theſe you ſhall read at large in the Regiſter, and F. N. B. which were too long and needleſs to be here recited.

The Protection Cum clauſula nolumus, that is, of right, is, that every ſpiritual perſon may ſue a protection for him and his goods, and for the fermors of their lands and their goods, that they ſhall not be taken by the Kings Purveyor, nor their carriages or chattels taken by other Miniſters of the King, which Writ doth recite the Statute of 14. E. 3.

Of theſe Protections I cannot ſay any thing of mine own experience, for albeit Queen Elizabeth maintained many Wars, yet ſhe granted few or no Protections, and her reaſon was, that he was no fit ſubject to be imployed in her ſervice, that was ſubject to other mens actions, leſt ſhe might be thought to delay Juſtice.

Sect. 200.

¶ *Entre & profeſſe en Religion.*

¶ Lev. eſt, un home q̄ eſt enter & profeſſe en Religion. Si tiel

THe fifth is, where a man is entred and profeſſed in Religion, if ſuch

ſuiſt un action, le tenant ou defendant poit monſtrer, que tiel eſt enter en religion en tiel lieu, en lozder de Saint Benet, & la eſt moigne pzofeſſe, ou en lozder des Friers pzeachers, ou minozs, & la eſt frere pzofeſſe, & iſſint des auters ozders de Religion, &c. & demaundza iudgement ſil ſerra reſpondue. Et la cauſe eſt, pur ceo que quant un home entra en Religion, & eſt pzofeſſe, il eſt mozt en ley, & ſon fits ou auter couſin maintenant luy enheritera auxy bien ſicõe il fuit mozt en fait. Et quant il entra en Religion il poit faire ſon teſtament, & ſes executors, les queux executozs averont un action de det due a luy devant lentre en Religion, ou auter action que executozs poient aver ſicome il fuit mozt en fait. Et ſil ne fait ſes executozs quant il entra en Religion, donques Lozdinarie poit committer ladminiſtration de ſes biens a auters homes ſicome il fuit mozt en fait.

ſuch a one ſue an action, the Tenant or Defendant may ſhew that ſuch a one is entred into Religion in ſuch a place, into the Order of St. *Benet*, and is there a Monk profeſſed, or in the Order of Friers Minors and Preachers, and is there a Brother profeſſed, and ſo of other Orders of Religion, &c. and ask judgement if he ſhall be anſwered; and the cauſe is this, that when a man entreth into Religion, and is profeſſed, he is dead in the Law, and his Son or next Couſin incontinent ſhall inherit him, as well as though he were dead indeed, and when he entreth into Religion he may make his Teſtament, and his Executors, and they may have an Action of Debt due to him before his entry into Religion, or any other action that Executors may have, as if he were dead indeed. And if that he make no Executors when he entreth into Religion, then the Ordinary may commit the adminiſtration of his goods to other as if he were dead indeed.

(a) It is to be obſerved that a man doth enter into Religion at his firſt coming, & liveth under obedience, but he is not profeſſed till a yeat be paſt, or ſome time of probation. And he is ſaid to be profeſſed when he hath taken the habit of Religion, & vowed three things, Obedience, Wilful Poverty, and perpetual Chaſtity. And therefore our Author ſaith here enter & profeſſe.

(a) Bract. lib. 5. f. 423. 421. Brit. c. 22. f. 39. Fleta l. 6. c. 41. 5. E. 2. tit. nonabil. 26. 3. H. 6. 24. 1. E. 3. 9. 7. H. 4. 2. Doct. & Stud. 141. 21. R. 2. judgemtnt 263. 11. R. 2. ibid. 107.

¶ *En Lorders des Freres Preachers, ou* (b) *Minors.* It appeareth in our Books that of Friers there were four Orders, viz. Minors, Auguſtins, Preachers and Carmelites, and the Franciſcani, Capuchini, and Obſervantes are included under the title of Minors, and they were called Obſervants, becauſe they be not conventual or joyned together in a Brotherhood, but live ſeparately, and bound themſelves to obſerve more ſtrictly the rights of their Order, (c) Cum quis ſemel ſe religioni contulerit, renunciat omnibus quæ ſeculi ſunt, habita diſtinctione utrum habitum probationis ſuſceperit, vel habitum profeſſionis.

(b) 4. H. 4. c. 17. 25. H. 8. c. 12.

(c) Bract. f. 48. b.

¶ *Il eſt mort en ley.* Civiliter mortuus, or mortuus ſeculo. (d) There is a death indeed, and there is a civil death or a death in Law, Mors civilis and mors naturalis, as here it appeareth, and therefore to ouſt all ſcruples, Leaſes for life are ever made during the natural life, &c. If the Father enter into Religion, then ſhall his Son and Heir have an Aſſiſe of Mordancetie, and the Writ ſhall ſay, (e) Si W. pater, &c. die quo obiit habitum religionis aſſumpſit, in quo habitu profeſſus fuit ut dicitur.

(d) Bract. f. 301. 426. Britton f. 226. 250, 251. Fleta. li 6. c. 41.

(e) F. N. B. 136. 5. E. 4. 3.

¶ *Auxibien*

¶ *Auxibien come il fuit mort en fait.* But yet to three purpoſes, profeſſion, that is, the civil death, hath not the effect of a natural death.

Firſt, This civil death ſhall never derogate from his own grant, nor be any mean to avoid it. And therefore if Tenant in Tail maketh a feoffment in fee, and entreth into Religion, his iſſue ſhall have no Formedon during his life, becauſe that ſhould be in derogation of his own grant, and be a mean to avoid the ſame.

(f) 32.E.1. Dower 176. 31.E.3. Colluſion 29. 33.E.3. Entre conge 52. 21.E.4.14.

(f) Secondly, It ſhall never give her avail, without whoſe conſent he could not have entred into Religion, and therefore his Wife after his civil death ſhall not be indowed, until his natural death. But if the wife, after her husband hath entred into Religion, alien the Land which is her own right, and after her husband is deraigned, the husband may enter and avoid the alienation.

Thirdly, It ſhall not work any wrong or prejudice to a ſtranger that hath a former right, and therefore if the Diſſeiſor entreth into Religion, and is profeſſed, ſo as the Land deſcends to his heir, yet this deſcent ſhall not toll the entry of the Diſſeiſee.

(g) 5.E.4.3.2.

(g) A woman cannot be profeſſed a Nun during the life of her husband: but ſome do hold a diverſity, (h) that ante carnalem copulam, the husband or wife may enter into Religion without any conſent, but Poſt carnalem copulam neither of them can without conſent of other.

(h) 18.H.6.33. per Fort.

(i) 31.E.3. Colluſion 29

(k) 34.E.3. Garranty 71 Vide the Chap. of Warranty, Sect.

(i) But if a man holdeth lands by Knights ſervice, and is profeſſed in Religion, his heir within age ſhall be in ward. (k) If I be diſſeiſed, and my brother releaſeth with warranty, and is profeſſed in Religion, and the warranty deſcendeth upon me, this warranty ſhall bind me, becauſe I am his heir, and ſuch inheritance as my brother had ſhall deſcend upon me.

(l) 21.R.2. Judgm. 263.

(l) And if one Joyntenant be profeſſed in Religion, the Land ſhall ſurvive to the other. If a man or a woman be profeſſed in Religion in Normandy, or in any other forein part, ſuch a profeſſion ſhall not diſable them to bring any Action in England, becauſe it wanteth trial, but they muſt be profeſſed in ſome houſe of Religion within this Realm, for that may be tried by the Certificate of the Ordinary, ſo as of forein profeſſions the Common Law taketh no knowledg. (m) And yet in ſome caſe one that is profeſſed in Religion within the Realm ſhall have an Action, as if he be made an Executor, or if he be an Adminiſtrator, he ſhall maintain an Action not in his own right, but in right of the Dead.

(m) 10.E.3.511.14.E.3. Executors 87.5.H.7.25. 21.H.6.30. 3.H.6.24.

(n) 44.E.3.9. Nonab. 3. 14. H. 8. 16.

(n) If a Monk be made a Biſhop, or a Parſon, or a Vicar, he ſhall have an Action concerning his Biſhoprick, Parſonage, or Vicarage, & ſic de ſimilibus.

(o) 2.H.4.7. 8.H.5.6. 7.E.4.30. 44.E.3.4. 20.E.3.Vill.10. & Nonability 9. 49.E.3.4. * Bract.f.415.416.429. Mir.c.2.Sect.14.14 H.4 37.b. 5.H.7.26. Vide Sect.296. 14.E.4.36.

(o) And if a Monk be Farmer of the King, yielding a rent, he ſhall have an Action concerning that Farm. And albeit Littleton ſpeaketh generally of one that is profeſſed in Religion, yet muſt it not be underſtood of the Sovereign or Head of the Religious Houſe, as of the Abbot, Prior, or the like, (*) for albeit they be profeſſed in Religion, yet by the policy of the Law, they are perſons able to purchaſe, and to implead, and to be impleaded, to ſue, and to be ſued for any thing that concerns the Houſe of Religion, for otherwiſe the houſe might be prejudiced, and other men alſo of their lawful Actions. And this is the Antient Law of England, as it appeareth in theſe words. (p) Des biens des gentes de Religion appent laction al chiefe en ſon noſme pur luy & ſon Covent But what if a Monk, &c. were beaten, wounded, or impriſoned, &c. doth the Law give no remedy therefore? yes verily, (q) for in that caſe the Abbot and the Monk ſhall joyn in an Action againſt the wrong doer, and if the Writ be Ad damnum ipſius Prioris, the Writ is good; and if it be ad damnum ipſorum, it is good alſo. Alſo if a Monk be by conſpiracy falſly and maliciouſly indicted of Felony and Robbery, and afterwards is lawfully acquitted, his Sovereign and he ſhall joyn in a Writ of Conſpiracy and the like. And where Littleton ſpeaketh of a man that is profeſſed in Religion, the ſame Law is of a Nun, Sanctimonialis, mutatis mutandis.

(p) Mir.ubi.ſupra.

(q) 22.Aſſ.87.21.E.3.41, 42. 22.E.3.2.37.H.6.8. 32.H.6.36.Br.l.5.f.416. 429. 13.E. 3. Bre. 261. 22.Ed. 3.2. 38.H.6.7. b. 24.E.3.34. b.45. 7.R.2.Nonability 3.9.

(r) A wife is diſabled to ſue without her husband, as much as a Monk is without his Sovereign, and yet we read in Books, that in ſome caſes a wife hath had ability to ſue and be ſued without her husband (t) for the wife of Sir Robert Belknap, one of the Juſtices of the Court of Common Pleas, who was exiled or baniſhed beyond Sea, did ſue a Writ in her own name, without her husband, he being alive; whereof one ſaid, Ecce modo mirum, Quod fœmina fert Breve Regis non nominando virum con junctim robore Legis.

(r) 4. H. 3. Br. 766.

(t) 2.H.4.f.7.2.

(t) King Edward the third brought a Quare impedit againſt the Lady of Malcravers, and ſhe pleaded that ſhe was Covert of Baron; whereunto it was repiped for the King, that her husband the Lord Malcravers, was put in exile for a certain cauſe, and ſhe was ruled to anſwer.

(u) 1.H.4.1. b.

(u) King Henry the fourth brought a Writ of Ward againſt Sibel B. who pleaded that ſhe was Covert Baron, &c. whereunto it was replied for the King, that her husband for a crime that he had committed againſt the King and the Peers, was relegate or exiled into Gaſcoigne, there to remain until he obtained the Kings grace: And Gaſcoigne chief Juſtice, Ex aſſenſu ſociorum, awarded that he ſhould anſwer.

Sir Tho. Egerton Lord Chancellor, in his argument which he publiſhed apart by himſelf in Ca-

Calvins caſe de Poſt-Natis, demanded what former Preſident there was for the warrant of the Lady Belknaps caſe in 2. H. 4. 7. which occaſioned me to ſearch, and upon ſearch I found that the like Judgment had been given before at the Parliament holden in Craft. Epip An. 19. Edw. 1. where the caſe was, That Thomas of Weyland being abjured the Realm for Felony, in the year before, Margery de Moſe his Wife, and Richard Son of the ſaid Thomas exhibited their petition of Right into the Parliament, for the Mannor of Sobbir, wherein her husband had but an eſtate for life joyntly with her, and the Inheritance in Richard the ſon by Fine. The Earl of Glouceſter, Lord of the Fee, (who claiming the Land by Eſchear, had taken the poſſeſſion thereof) alledged, Quod non fuit juri conſonum quod aliqua fœmina intraret in aliquas terras vivente marito ſuo, eo quod præfatus Thomas abjuravit Regnum & adhuc vivit, & aſſerit idem Comes nunquam hujuſmodi caſum accidiſſe, & inde petit poſt multas allegationes quod poſſit prædictum manerium tenere ut eſchaetam ſuam. Super quo per ipſum Dominum regem præceptum fuit, quod tam Juſtic' ſui de utroque Banco quam cæteri de Regno ſuo tam milites quam Servientes in legibus & conſuetudinibus Angliæ experti mandarentur, quod eſſent coram Rege & ejus Conſilio, &c. ad certiorandum ipſum Regem qualiter & quomodo in caſu iſto fuerit procedendum, & qualiter temporibus præteritis & anteceſſorum ſuorum in caſibus conſimilibus fieri conſuevit, & interim ſcrutantur Records de conſimilibus, ubi recitantur duo vel tres conſimiles caſus. Et quia licet prius non videbatur aliquibus juri conſonum fuiſſe quod uxor in vita viri ſecundum ſanctam Eccleſiam, qualitercunque deliquiſſet quoad forum Regium, non poſſet nec deberet a viro ſuo ſeparari, & ſic quicquid foret in poſſeſſione uxoris, converteretur in poteſtatem viri ſui, & hoc manifeſte imminueret contra conſuetudinem Regni. Et etiam quia quidam dubitabant quod de poſſeſſionibus & bonis uxoris vir poſſit aliqualiter ſuſtentari. Tamen coram Conſilio Domini Regis vocatis Theſaurar' & Baronibus & Juſticiariis de utroque Banco concordatum eſt, quod prædicta Margeria rehabeat talem ſeiſinam, &c. ſecundum purportum finis prædict. &c. Patet etiam conſimile exemplum tempore Henrici patris regis. I have cited this ſolemn reſolution the more at large, becauſe there be many excellent things to be obſerved in it: ſo as by that which hath been ſaid, it plainly appeareth, that this opinion concerning the hability of the Wife of a man abjured or baniſhed, was not firſt hatched by the Judges in Henry the fourths time. And here is to be obſerved, that an abjuration, that is, a depoſtation for ever into a Forein Land, like to Profeſſion, (whereof our Author ſpeaketh here) is a civil death, and that is the reaſon that the Wife may bring an action, or may be impleaded during the natural life of her husband. And ſo it is, if by Act of Parliament the husband be attainted of Treaſon or Felony, and ſuffer his life, is baniſhed for ever, as Belknap, &c. was, this is a civil death, and the Wife may ſue as a Feme ſole. And hereby you may underſtand your Books which treat of this matter. But if the husband by Act of Parliament, have judgment to be exiled but for a time, which ſome call a Relegation, that is no civil death. And in 8. E. 2. an abjuration is called a Divorce between the husband and Wife. Sed opus eſt interprete; for by Law no Subject can be exiled or baniſhed his Country, whereby he ſhall perdere patriam, but by Authority of Parliament, or in caſe of Abjuration, and that muſt be upon an ordinary proceeding of Law, as it was in this caſe of Weyland.

Another example we have in our Books to this effect: If the husband had aliened the Land of his Wife, and after had committed Felony and been abjured the Realm, the Wife ſhall have a Cui in vita in his life time, agreeable with the ſaid reſolution in Parliament, for that the abjuration was a civil death.

See in the Regiſter, a woman was baniſhed out of the Town of Calice for adultery, by the Law or cuſtom of that place, and there appeareth Carta pardonationis pro muliere bannita. Sed nos non habemus talem conſuetudinem.

(a) But by the Common Law, the Wife of the King of England is an exempt perſon from the King, and is capable of Lands or Tenements of the gift of the King, as no other Feme covert is, and may ſue and be ſued without the King, for the wiſdom of the Common Law would not have the King (whoſe continual care and ſtudy is for the publick, & circa ardua Regni) to be troubled and diſquieted for ſuch private and petty cauſes: ſo as the Wife of the King of England is of ability and capacity to grant and to take, to ſue and to be ſued as a Feme ſole by the Common Law.

(b) And ſuch a Queen hath many prerogatives, as, ſhe ſhall find no pledges, for ſuch is her dignity, as ſhe ſhall not be amerced.

The Queen nor the Kings Son are reſtrained by the Statute of 1. H. 4. c. 6. concerning grants by the King.

(c) In a Quare impedit brought by her, ſome ſay that Plenarty is no plea, no more than in the caſe of the King.

(d) If any Bailiff of the Queens bring an action concerning the Hundred, he ſhall ſay, In contemptum Domini Regis & Reginæ.

Pl. in Parliam. 19. E. 1.

Note the antient trial of difficult matters in Law.

The great Authority of Judicial Records and Preſidents.

A ſolemn reſolution of the Law in this point.

8. E. 2. Coron. 425.

So reſolved in Parliament upon the making of the Statute of 35. E. 1. c. 1. Exilium Hugonis de Spencer patris & filii tempore E. 2.

31. E. 1. Cui in vita 31.

Regiſt. fol. 312. b.

(a) Vid. in my Preface to the ſixth Book. This was Law before the conqueſt 10. E. 3. 27. b. 508. 30. E. 3. 5. 18. E. 3. 1. 22. E. 3. 21. 49. E. 3. 4. 49. Aſſ. 8. 11. H. 4. 67. 14. E. 3. Voucher 110. 20. E. 3. Nona. 9 31. E. 3. Quar. Imp. 146. 3. H. 7. 14. 19. H. 6. 2. 28. H. 6. 13. 7. H. 7. 7. 2. 26. H. 6. Aid le Roy 24. Flet. l. 2. c. 63. in Fine. Pl. Com. 231. Stanf. prær. 10. b.

(b) 18. E. 3. 2. 33. E. 3. brief 916. F. N. B. 101. 2.

(c) 18. E. 3. 32. 24. E. 3. 35. 75.

(d) 32. E. 3. Brē. 346. 9. E. 3. 33.

The Queen ſhall pay no Toll.

(e) F.N.B.235. A. (e) If the Tenant of the Queen alien a certain part of his Tenancy to one, and another part to another, the Queen may diſtrain in any one part for the whole, as the King may do: but other Lords ſhall diſtrain but for the rate, and therefore where the Queen is diſtrained, (f) F.N.B.1.F. there lieth a Writ De onerando pro rata portione (f). The Writ of right ſhall not be directed to the Queen no more then to the King, but to her Bailiff, otherwiſe it is when any other is Lord.

(g) 14.E.3.Voucher 110 21. E.3.53. 22.E.3.3.b. 17.E.3.65. 20.E.3.17. 5.E.3.4.15.E.3.Aide del Roy. 69. 10.E.2.18. 26.H.6.Aide le Roy 24. (g) In caſe of aid prier of the Queen, it is Domina regina inconſulta, and the cauſe of the aid prier ſhall not be counterpleaded no more then in the Kings caſe. And ſee where the aid ſhall be granted of the King and Queen, and where of the Queen only, and ſhe of the King.

(h) 21.E.3.13.34.E.3. Protect.122.11.H.4.67.b (h) But a Protection ſhall be allowed againſt the Queen, but not againſt the King, neither ſhall the Queen be ſued by Petition, but by a Præcipe. (i) The Queen is not bound by the

( ) 30.E.3.5. Statute of Marlebridge for biding a diſtreſs into another County.

(k) Leſtat.de 25.E.3.de Proditionibus. (k) If any do compaſs the death of the Queen, and declare it by any other fact, the like intent is treaſon, as in the caſe of the King.

(l) Rot.Parliam. 8.H.6.nu.7. (l) No man may marry the Queen Dowager without the Kings licence. But let us now return to Littleton.

(m) 4.E.4.25. 6.E.4.4. 45 E.3.10.2.18.E.4.19. 22.H.6.5.5.H.7.25.b. ¶ *Il poet faire ſon teſtament & ſes executors, &c.* (m) If A. be bound to the Abbot of D. A. is profeſſed a Monk in the ſame Abby, and after is made Abbot thereof, he ſhall have an action of Debt againſt his own Executors.

(n) Pl.Com.280.281. Greisbrooks caſe. ¶ *Dongues lordinary poet commit adminiſtration, &c. ſicome il fuit mort en fait.* (n) Note the Statute of 31 E.3.c.11. that giveth actions to the Adminiſtrators ſpeaketh of a man that dies inteſtate, which by the Authority of Littleton extendeth as well to a civil death as to a natural.

Sect. 201.

¶ *Excommenge, excommunicatus, excommunicatio.* (a) Sicut quis poterit habere lepram in corpore, ita & in anima. Excommunicato interdicitur omnis actus legitimus, ita qd agere non poteſt, nec aliquem convenire, licèt ipſe ab aliis poſſit conveniri.

(a.) Bracton l.5.fo.415. 426.427.Fleta l.6.c.44. Britton,c.49.fo.125. Excommunicatio eſt nihil aliud quam cenſura à Canone vel Judice Eccleſiaſtico prolata & inflicta privans legitima communione Sacramentorum, & quandoque hominum.* It is divided into the greater and the leſſer. Minor eſt per quam quis à Sacramentorum participatione conſcientia vel ſententia arceatur. Major eſt quæ non ſolum à Sacramentorum, verumetiam fidelium communione excludit, & ab omni actu legitimo ſeparat & dividit: but either of them both diſableth the party.

* F.N.B.64.F.

(b) Bract.426.b acc. (b) Cum excommunicato autem nec orare nec loqui, nec palam, nec abſconditè, nec veſci licet, exceptis quibuſdam perſonis. But every Excom-

¶ *Cy vi. eſt, lou un home eſt excommenge per la ley de ſaint Eſglíſe, & il ſuiſt un action real ou perſonal, le tenant ou defend poit plede que celuy que ſuiſt eſt excommenge, & ceo covient mie lett de Leveſqz ſouth ſon ſeale, teſmoignant lexcommengement, & demaunder a iudgement ſil ſerra reſpondue, &c. Mes en ceſt cas ſi le demandant ou plaintife ceo ne poit dedire, le bre nabatera my, mes le iudgement ſerra que le tenant ou defendant alet quite ſans*

THe vi. is, where a man is excomunicated by the law of holy Church, and he ſueth an action real or perſonal, the tenant or defendant may plead that he that ſueth is excommunicated, and of this it behoves him to ſhew the Biſhops Letters under his Seal, witneſſing the excommunication and ask judgment if he ſhall be anſwered, &c. but in this caſe if the demandant or plaintiff cannot deny it, the writ ſhall not abate, but the judgment ſhall be that the tenant or defendant ſhall go quit without

tour, put ceo q̄ quant le demandant ou plaintife ad purchase les letters de absolution, & ceux sont monstres a le court, il poit aū un resommons, ou reattachment sur son originall, solonque la nature de son brē. Mes en les auters b. cases le brē abatera, &c. si le matter mē ne poit estre dedit.

day for this, that when the demandant or plaintife hath purchased his letters of absolution, and shewed them to the Court, he may have a re-sumons or a re-attachment upon his original, after the nature of his writ, &c. But in the other cases the Writ shall abate, &c. if the matter shewed may not be gainsaid.

munication disableth not the party. (c) If Bailiffs and Commons or any other Corporation aggregate of many being an Action, Excommengement in the Bailiffs shall not disable them, for that they sue and answer by Attorney, otherwise it is of a sole Corporation. But if Executors or Administrators be excommunicated, they may be disabled, because they which converse with a person excommunicate are excommunicate also. (d) If a Bishop be defendant an excommunication by the same Bishop against the Plaintife shall not disable him, and it shall be intended for the same cause, if another be not shewed.

(c) 30.E.3.15.42.E.3.13 21.H.6.30.21.E.4.49.

(d) See Artic.Cleri.c.7. 5.E.3.8. 8.E.3. 70. 9.H.7.21.10.H.7.8.& 9 18.E.3.58. 28.E.3.97. 16.E.3.Excom.5. 20.E.3.ibid.9. 3.H.4.3.

¶ *Letter del eveſque de ſouth ſon ſeale.* (e) None can certifie excommengement but only the Bishop, unless the Bishop be beyond Sea or in remotis, as one that hath ordinary jurisdiction, and is immediate Officer to the Kings Courts. As the Archdeacon of Richm. or the Dean and Chapter in time of vacation. (f) But in antient time every Official or Commissary might testifie Excommengement in the Kings Court, and for the mischief that ensued thereupon it was ordained by Parliament, that none should testifie Excommengement but the Bishop only.

(e) Bracton l.5.f.426.b. 12.E.4.15. 20.H.6. 17. 20.E.3. Excommengement 20.33.E.3.ibid.29. 44.E.3.ibid.23.11.H.4. 14. F.N.B.64.65. 239. 7.E.4.14. 8.H.6.3. Regiſt. 67.

(f) 11.H.4.62. in Debt.

(g) If a Bishop certifie, that another Bishop hath certified him that the party which is his Diocesan is Excommunicated, this Certificate upon anothers report is not sufficient. (h) If the Bishop of Rome, or any other having forein Authority doth excommunicate any Subject of this Realm, and certifieth so much under his Seal of Lead, this shall not disable the party: For the Common Law disallows all Acts done in disability of any Subject of this Realm by any forein power out of the Realm, as things not authentick whereof the Judges should give allowance. (i) If the Bishop certified the Excommunication under seal, albeit he dieth, yet the Certificate shall serve. (k) Si quis innodatus fuerit per excommunicationes diversas pro diversis delictis, & profert literas absolutionis de una sententia, non erit absolutus quousque de omnibus aliis absolvatur.

(g) 33.E.3.Excom.29. F.N.B. 65.

(h) 16.E.3.Excom.4. 31.E.3.ibid.4. & 6. 30.Aſſ.19. F.N.B.64. 4.H.7 15.12.E.4.15. 14.H.4.14.

(i) 14.E.3.Excom.8. 8.E.2.ibid.26.

(k) Hil.14.E.3. Coram Rege Lond. in Theſaur.

¶ *Eveſque.* Episcopus, A Bishop is regularly the Kings immediate Officer to the Kings Court of Justice in causes Ecclesiastical, and all the Bishopricks in England are of the Kings foundation, and the King is Patron of them all, (l) and at the first they were donative, and so it appears by our Books, and by Acts of Parliament, and by History, and that was Per traditionem annuli & pastoralis baculi. i the Crosier. And King Henry the First being perswaded by the Bishop of Rome to make them elective by their Chapter or Convent, refused it. (m) But King John by his Charter acknowledging the Custom and Right of the Crown in former times, yet granted De communi consensu Baronum, that they should be eligible, which after was confirmed by divers Acts of Parliament. And afterward the manner and order as well of Election of Archbishops and Bishops, as of the Confirmation of the Election, and Consecration is (n) enacted and expressed in the Statute of 25. H. 8. But by the Statutes of 31. H.8. and 1. E. 6. they were made donative by the Kings Letters Patents, both which Statutes are repealed, and the Statute of 25. H. 8. doth yet remain in full force and effect.

(l) 17.E.3.f.40.25.E.3. cap.de proviſi.25.H.8. c.10.l.3.f.73. le cas de Dean & Chapter de Norw.Mar.Par.pag.62. Vide Sect.133.134.

(m) Rot.Patent.15. January 17. Regis Johannis. Mar.Par.pag. 252 35.E.1.Leſtat. de Carliſle.25.E.3.Leſtat. de proviſi.13.R.2.c.2.

(n) 25.H.8.c.22.

And where Littleton saith, that the Bishop under his Seal must testifie, or it is to be known (o) that none but the Kings Courts of Record, as the Court of Common Pleas, the Kings Bench, Justices of Gaol delivery, and the like, can write to the Bishop to certifie barratry, multiety loyalty of Mattrimony, and the like Ecclesiastical matter: for it is a rule in Law, That none but the King can write to the Bishop to certifie, and therefore no inferiour Court, as London, Norwich, York, or any other Incorporation can write to the Bishop, but (p) in those cases the plea must be removed into the Court of Common pleas, and that Court must write to the Bishop, and then remand the Record again. And this was done in respect of the honor and reverence which the Law gave to the Bishop, being an Ecclesiastical Judge and

(o) 2.E.3.Corone, 160. 8.E.3.59.24 E.3.33. 44.E.3.28. 8.R.2. Conuſans, 88.

(p) 41.E.3. 42.E.3.f.6 18.E.3.61. 14.H.4.25. 5.H.4.10. Regiſt.7.2. N.B.6.E.

and a Lord of Parliament, by reason of the Barony which every Bishop hath. And this was the reason (a) a Quare Impedit did lie of a Church in Wales in the County next adjoyning, for that the Lordships Marchers could not write to the Bishop, (b) neither shall Conusance be granted in a Quare Impedit; because the inferiour Court cannot write to the Bishop. And herewith agreeth Antiquity. (c) Nullus alius præter regem potest episcopo demandare inquisitionem faciendam. (d) And another speaking of Iopalty of marriage, Nec alius quàm Rex super hoc demandaret episcopo, quod inde inquireret: Episcopus alterius mandatum quàm Regis non tenetur obtemperare; and therewith agreeth Britton also.

(a) 8 E.3.59.36.H.6.33 tit.quar.Imp.Brook 109 35.H.6.30. 11.H.6.3. 24.E.3.33.
(b) 15.E.3.Conusans 41 Jurisdict.24.40.E.3.2. vide Sect. 134.
(c) Bract.l.3. 106.
(d) Fleta l.5.c.24. Britton fol.248. b.

¶ *Ne Briefe nabatera, &c.* Abater is a French word, and signifieth Destruere, or Postruere, to destroy or prostrate. And Abatement de briefe is a prostration or overthrowing of the Writ.

(*) Bract.l.5.f.425. 11.R.2.Excom.25.13.E. 4.8. 3.Ass.p.12.

¶ * *Alera quite sauns jour, &c.* That is, to go quiet without any continuance to any certain day, and therefore the Defendant is not bound to any certain attendance, until the party purchaseth his Letters of absolution, and the re-attachment, or re-summons be sued, the entry of which award is, Ideo loquela prædicta remaneat sine die quousque, &c.

Vide Sect. 691.

¶ *Four.* Dies (e) in legal understanding is the day of appearance of the parties, or continuance of the plea. And you shall understand that first in real actions there are dies communes, common days, whereof you shall read in divers antient Statutes.

(e) 51.H.3.c.1. & 2. Marlebr.c.12. 32.H.8. ca. 21.

(f) Also in all Summons upon the original there must be fifteen days after the Summons before the appearance. (g) But if the original be returned tarde, and Sommons alias goeth forth, there must be nine Returns between the Teste and the return. And so in other judicial proces in real actions, saving if Conusance be demanded to be holden within his manor, there proces shall be awarded from three weeks to three weeks.

(f) Articul. super Cart. c.15. 28.E.1.
(g) 8.H.6.20.30.H.6.35 8. Eliz. Dier 252.

And before the Statute of Articuli super cartas, in all Summons and Attachments in plea of Land there shall be contained the term of fifteen days. (q) And it appeareth as well by the Statute, as by the antient Authors of the Law, who wrote before the Statute, that this was the antient Common Law: and the reason of these long days given in real Actions, was (the recovery being so dangerous) that the Tenant might the better provide him both of answer and of proofs, (*) but by consent they may take other then common days.

(q) Mirror c.2.Sect.19. Bract.l.5.fo.334. & l.4. fo.255. Brit.fo.279.b. Fleta l.6.c.6. 12.E.4.15.
(*) 11.H.6.22. 15.E.3. jour.22.21 E.3.29 15 Ass. Britton fo. 1c. b.

And it is not amiss to note what the antient Law was in proceeding against a man for his life. And therefore hear what Britton saith, Sur le presentment de ceste Felony (under which he includeth also Treason) voilons nous (for he wrote in the Kings name) que trestous ceux que enter'ser' endites, face le Viscont hastiment prender, & safement lour corps en prison garder & que ilz sont menes devant nous, ou devant nous Justices: & pur ceo que nulluy ne soit disgarnis de lour respons, voilons que ceux que issint soient prise que ilz eynt temps de purveyer lour respons 15. jours au meyns silz le prienr, & en dementiers soient safement gardes: (r) Vide Forteſcue of this matter. And see the Mirror that in some cases the party convicted had forty days, or at least thirty days to shew some matter to disturb (that is, to arrest) Judgment, which now I know is gone in desuetudinem, and great expedition is now made in pleas of the Crown concerning the life of man. Sed de morte hominis nulla est cunctatio longa.

(r) Forteſcue in Libro de laudibus legum Angliæ. Mir. c.4. Sect. Sept. choses disturbent judgment mortels.

(f) And the use of the Kings Bench at this day is, that if the offence be committed in another County then where the Bench sits, and the Indictment be removed by Certiorari, there must be fifteen days between every proces and the return thereof, but if it be committed in the same County where the Bench sit, they may proceed de die in diem, but so they will do rarely: but let us return again to the Common Pleas.

(f) Lib.9. 118.b. Zanchers case.

Secondly, there is a day called dies specialis, (a) as in an Assise in the Kings Bench, or Common Pleas, the Attachment need not be 15 days before the appearance. Otherwise it is before Justices assigned, but generally in Assises, the Judges may give a special day at their pleasure, and are not bound to the common days, (*) and these days they may give as well out of term as within. So upon an imparlance the Court may give any special or particular day, but that must be in the term time, and likewise in a Scire facias, upon a fine or a recovery in a real action, because it is a Writ of Execution, and so it is in a per que servitia and the like, and in all judicial Writs, in proces against an Infant to judge of his age, or where the husband prayeth in aid of his Wife, or in a pone at the suit of the Defendant, there need not be fifteen days. And after Demurrer in Law, the Court may give what day they will. (b) And it is worthy the noting, that if in an Assise the parties be adjourned to West. usque 15. Paschæ, there they be not demandable till the fourth day, but if it be adjourned usque diem Lunæ, or diem Martis, there the paties are demandable on that day.

(a) Artic super cart. ubi supra. F.N.B.177.c.11. Ass.30.12.Ass.4.22. Ass. 79.3.H.6.Ass.2.9.E.4 5. 2.27.E.3.1.2.W.1.c.ult
(*) F.N.B.177.D 7.Ass. 7 14.Ass.4. 24.E.3.31. 39.E.3.20 9.E.4.18. 12.E.4.15. 8.H.5.Er.87. 12. E. 4. 15.

b) 41.E 3.Jour.16.8.E.4 4.1.H.6 4. 27.Ass.22.

Thirdly (c) there is a day of grace, dies gratiæ, or a day of courtesie, the name doth shew of what kind it is, and regularly this day is granted by the Court, at the prayer of the Demandant

(c) 3.E.2.avowry 188. 15.E.3 jour. 26.21.E.3. 20.1.E.3.4.1 9.f.49. Countee de Salops case. 33.H.6.42.

mandant or Plaintiff in whose delay it is, and never at the prayer of Tenant or Defendant. But it is worthy of observation (d) that a day of grace is never granted where the King is party by Aide prayer of the Tenant or Defendant, nor where any Lord of Parliament or Peer of the Realm is Tenant or Defendant. (e) And sometime the day that is a die post is called dies gratiæ, for the very day of return is the day in Law, and to that day the Judgment hath relation, but no default shall be recorded till the fourth day be past, unless it be in a Writ of right, where the Law alloweth no day, but only the day of return. This day is sometime called dies amoris, and sometime a dies datus, but it were too long to enumerate all. This shall be sufficient to give the Reader a taste to understand the residue concerning this matter.

(d) 14.E.3.jour.24. 15. E.3. ib.21. 22.E.3.9. 27.E.3.88.

(e) 22.E.4.jou.39.18.E.3 ib.20. 38.E.3.20.9. Ass. 21.21.E.3.13.41.E.3.ib. 16.33.H.6.42.34.H.6.27 10.El.Dier 269.39 H.6 29.24.E.3.28.24.E 3. breve 556.Bract.l.5. fo. 367.

(f) There is also a day of appearance in Court by the Writ, and by the Roll: by Writ when the Sheriff returns the Writ. By the Roll, when he hath a day by the Roll, and the Sheriff return not the Writ, there the Defendant to save himself from corporal pain as by imprisonment, or to prevent the loss of issues, or to save his freehold or inheritance, may appear by the day he hath by the Roll.

(f) 21.E.3.43.3.H.16. 2.a 22.H.6.20.3.E.4.15.6.E 4.7.E.4.15.8.E.4.18.3.H 7.8.10.H.7.11.b.27.H.8 14.lib. 11.40.17.E.3.2. 11.Eliz.Dier.286.

(g) Note, it is said commonly that the day of Nisi prius, and the day in bank is all one day, that is to be understood as to pleading, but not to other purposes.

(g) 21.H.6. 10.20. 4.H.6.9. 40.E.3.31.

There are dies juridici (which (h) Britton calleth temps covenables) and dies non juridici: dies juridici (except it be in Assises) are only in the term. (i) And there be also in the term dies non juridici. As in all the four terms the Sabbath day is not dies juridicus, for that ought to be consecrated to Divine Service. Also in Michaelmas Term, the Feasts of All Saints and of All Souls: in Hillary Term, the Purification of the Blessed Virgin Mary; and in Easter Term, the Feast of the Ascension, are not dies juridici, but set apart by the antient Judges and Sages of the Law for Divine Service. For Trinity Term (which sometime had seven days of return, and was as long as Michaelmas Term is now: but for avoiding of infection in that hot time of the year, and that men might not be letted to gather in Harvest, three returns (since Littleton wrote) viz. Crastino Sancti Johannis Baptistæ, Octabis Sancti Johannis Baptistæ, and 15. Sancti Johannis Baptistæ, are by the Statute of 32. H. 8. cut off and become dies non juridici) And in those days the Feast of Saint John the Baptist was not dies juridicus. And the said Statute called, Dies Communis in Banco, is in divers points (since Littleton wrote) altered, as by the said Statute appeareth. And in antient time respect and reverence was had by Law to certain times, as it appeareth (k) by the Statute of W. 1. cap. 5. which hath a short but an excellent preamble: viz. Et pur ceo que grand charitie serra de faire droit a touts in tout temps, ou mestier serroit, purvieu est per assentment des prelates, que Assises de novel disseisin, mortdauncester, & darreine presentment fuissent prises en le Advent, en Septuagesime, & en Quaresme, auxibien come (le home) prent lenquestes, & ceo pria le Roy, as Evesques.

(h) 32.H.8.cap.21.

(i) Mirror cap.3.Sect. exception de temps & cap.5.Sect.1.

(k) W.1.cap.ultimo.

(l) This Statute is expounded in Books, which I have only added, to the end the studious Reader might understand the Books that darkly speak of this matter, and be ignorant of nothing that belongs to the understanding of any part of the Law. Now Advent is a month before the Feast of the Nativity of our Saviour Christ, so called, De adventu Domini in carne. Septuagesima beginneth ever on the Sabbath day, and is the third Sabbath before Shrovesunday, so called, because it is the 70. day before the Feast of Easter. Sexagesima is the second Sabbath before Shrovesunday, so named, because it is the 60. day before Easter, and so of Quinquagesima, and Quadragesima, (m) whereof you shall read in Acts of Parliament, and antient Authors. Now as there be dies juridici, so there be horæ convenientes, whereof the Mirror saith, (n) Abusion que len tient pleas per dimenches (id est, Sabbaths) ou per auters jours defendus, ou devant le soliel levy, ou nostantre, ou en dishoneſt lieu.

(l) 7.Ass.p.7. 14.Ass.5. F.N.B.177. &c. Britton fol.134.b.

(m) W.1.c.51. fait an. 3.E.1. Britton f.134. cap.53.

(n) Mirror l. 5. Sect.1.

(o) Furthermore, there are (as antient Authors term them) Dies solaris & dies lunaris, secundum quod Deus divisit lucem à tenebris, ex quibus duobus diebus efficitur unus dies qui dicitur artificialis ex die præcedente & nocte subsequente, qui constat ex 24 horis.

(r) Bract.l.4.fo.264. Britton fo.209.

But we at this day retaining the same method do differ in words. For we say, Dierum alii sunt naturales, alii artificiales, dies naturalis constat ex 24 horis, & continet diem Solarem & noctem, and therefore in Indictments of Burglary, and the like, we say, in nocte ejusdem diei. Iste dies naturalis est spatium in quo Sol progreditur ab Oriente in Occidentem, & ab Occidente iterum in Orientem. Dies artificialis sive Solaris incipit in ortu Solis, & desinit in occasu: and of this day the Law of England takes hold in many cases. Now divers Nations begin the day at divers times. The Jews, the Chaldeans and Babylonians begin the day at the rising of the Sun, the Athenians at the fall, the Umbri in Italy begin at mid day, the Ægyptians and Romans from midnight, and so doth the Law of England in many cases. Of all which you shall read plentiful matter in our Books, and in my Reports, which by this short instruction you shall the better understand.

Gen. c.1.ver 4.5.

(p) There is also Annus minor and major. The lesser year consisteth of 365 days, and six hours, whereby in every fourth year there is dies excrescens, which makes that year to have

(p) Bract.l.5.fo.359. Britton fo.209.a.

(q) 17.Eliz.Dier.345.

(r) 21.H.3.ſtat. de anno biſſextili.

(ſ) Lib.6.f.62.Catesbies caſe.

habe in rei veritate 366. daps, and that is called annus major. (q) A quarter of a pear containeth by legal computation 91 daps, and half a pear containeth 182 daps, for the odd hours in legal computation are reſected, and by (r) the Statute de anno biſſextili, it is prohibed, Quod computentur dies ille excreſcens & dies proxime præcedens pro unico die, ſo as in computation that day excreſcent is not accounted. A month, menſis, is regularly accounted in Law 28 daps, and not according to the Solar month, nor according to the Kalendar (ſ) unleſs it be for the account of the laps in a quare Impedit. There is menſis Solaris, and menſis Lunaris. Solaris eſt 12 pars anni, viz. ſpatium 30 dierum, horarum 10, & minutorum 30, & Lunaris eſt ſpatium 28 dierum.

¶ *Re-ſommons ou re-attachment.* Theſe are Writs that the Demandant or Plaintiff after he hath obtained his Letters of abſolution may ſue out to bring the Tenant or Defendant again into Court to have day, to make anſwer unto him. (t) And theſe Writs do lie in all caſes when the plea is diſcontinued or put without day either in this caſe or in caſe when the Demandant or Tenant hath his age, or for the non venue of the Juſtices, or in caſe of a Protection or Eſſoine de ſervice le Roy, &c. Of theſe Writs there be two ſorts, viz. general and ſpecial, whereof you may ſee preſidents, and read more at large in the caſe of diſcontinuance of Proceſs in my Reports, and need not here to be inſerted.

(t) Bract.l.5.fo.425. Britt. c.74.l.7.f.29.30.

¶ *Sur ſon original.* This is intended of his original Writs, or of that which is inſtead of an original Writ. But note that in the other five caſes the Writ ſhall abate, and in the caſe of Excommengement the Writ ſhall not abate, but the plea to be put without day until the Plaintiff purchaſe his Letters of abſolution, and ſue out his re-ſummons, or re-attachment.

But in the caſe of Outlawry the Writ ſhall abate if he obtain not his pardon. 44.E.3.27.

In antient times more perſons ſeemed to be diſabled then theſe ſir recited by Littleton. As firſt he that was a Leper, and by the Writ De leproſo amovendo was propter contagionem morbi prædicti (as the Writ ſaith) & propter corporis deformitatem (as others ſay) to be removed from the ſociety of men to ſome ſolitary place, and thereupon (u) it is ſaid, Datur etiam exceptio tenenti, ex perſona petentis peremptoria propter morbum petentis incurabilem & corporis deformitatem, utſi petens leproſus fuerit, & tam deformis quod aſpectus ejus ſuſtineri non poſſit, & ita quod à communione gentium ſit ſeparatus, talis quidem placitare non poteſt, nec hæreditatem petere.

(u) Bract. l.5.f.421.

(x) Britton.f.39. & 88.

(x) And herewith Britton agreeth treating of diſabled men, as men outlawed, abjured the Realm, attainted of Felony, &c. addeth, ne meſel, oaſte de common gents.

(y) Fleta l.6. c.39. 22.E.3.in dorſ.clav.20. part.nu.14. F.N.B.234.Regiſter.

(y) And Fleta ſaith, Competit etiam ei exceptio propter lepram manifeſtam, ut ſi petens leproſus fuerit & tam deformis quod à communione gentium merito debet ſeparari, talis enim morbus petentem repellit ab agendo.

And if theſe antient Writers be underſtood of an appearance in perſon, I think their opinions are good Law, for they ought not to ſue, nor defend in proper perſon, but by Atturney, for they are ſeparated à communione gentium propter contagionem morbi & deformitatem corporis.

(a) Cambden in Leiceſterſhire, verbo Burton.

Before the Conqueſt this Diſeaſe was not known in England, for Maſter Camden writing of Burton Lazers in Leiceſterſhire, ſaith, (a) Primis Normannorum temporibus collecta per Angliam ſtipe noſocomium hoc conſtructum ferunt, quo tempore lepra (quæ à nonnullis Elephantiaſis) graviſſime vi contagionis per Angliam ſerpſit. And it is called Morbus Elephantiaſis, becauſe the skins of Lepers are like to Elephants.

(b) Levit.c.13.ver.44. 45.46.Numer.cap.5. ver.1.2.4. Regum.c.15.

(b) And the Law of England for the removing of the Lepers from the ſociety of men to ſome ſolitary place, is grounded upon Gods Law.

(c) Bract.l.5. 420.421. Britton. fo. 39. Fleta l.6.c.37.

(c) Alſo there was a time when Ideots, Madmen, and ſuch as were deaf, and dumb naturally, were diſabled to ſue, becauſe they wanted reaſon and underſtanding, (tales enim non multum diſtant à brutis) but at this day they all may ſue, for the ſuit muſt be in their name, but it ſhall be followed by others.

(d) 33.H.6. 18. F.N.B.27.G.

(d) And note, that when an Ideot doth ſue or defend, he ſhall not appear by Gardian or Prochein Amy, or Atturney, but he muſt be ever in perſon,

(e) 27.H.8.11.40.E.3.16 20.E.4.2.F.N.B.27.H.

(e) but an Infant or a Minor ſhall ſue by Prochein Amy, and defend by Gardian: but now let us hear what Littleton will ſay unto us.

Sect. 202.

(d) Mirror c.2.Sect.18 Doct.& Stud.fo.141. 4.E.4.25.per Danby. 27.Aſſ.pl.49.

¶ *Chapleine* (a) *ſeculer*, Is he that is intra ſacros ordines, but he is not regular, ſ that is) liveth not under certain Rules,

¶ Item ſi un villein eſt fait un chapleine ſeculer, uncore ſon ſeignior poit luy

Alſo if a villain be made a ſecular Chaplain, yet his Lord may ſeiſe him as ſeiſer

ſeiſer cõe ſon villein, & ſeiſie les biens, &c. Mes il ſemble que ſi le villein enter en Religion, & eſt profeſſe, que le Sñr ne poit luy prender ne ſeiſer, pur ceo que il eſt mort en ley, nient plus q̃ ſi un frank hõe prent un niefe a ſa feme, le Seignior ne poit prender ne ſeiſer la feme de le Baron. Mes ſon remedy eſt daver un action envers le baron, pur ceo que il prift ſa niefe a feme ſans ſon licence & volunt, &c. Et iſſint poit le Sñr aver action envers le ſovereign del meaſon qui prift & admittaſt ſon villein deſtre profeſſe en meſme le meaſon ſans licence & la volunt le Seignior, & recovera ſes damages a la value de le villein. Car celuy qui eſt profeſſe Moigne ſerra un Moigne, & come un Moign ſerra pris pur terme de ſa vie natural, ſinon que il ſoit deraigne per la ley de ſaint Eſgiſe. Et il eſt tenus per ſon Religion de gard ſon cloiſter, &c. Et ſir Sñr luy poiſt prender hors de ſa meaſon, donques

his villein, and ſeiſe his goods, &c. But it ſeemeth that if the villein enter into Religion, & is profeſſed, that the Lord may not take nor ſeiſe him, becauſe he is dead in Law, no more then if a free man taketh a niefe to his Wife, the Lord cannot take nor ſeiſe the Wife of the husband, but his remedy is to have an action againſt the husband, for that he took his niefe to wife without his licence and will, &c. And ſo may the Lord have an action againſt the Sovereign of the houſe which takes and admitteth his villein to be profeſſed in the ſame houſe, without the licence and leave of the Lord, and he ſhall recover his damages to the value of the villein. For he which is profeſſed a Monk ſhall be a Monk, and as a Monk ſhall be taken for term of his natural life, unleſs he be deraigned by the law of holy Church. And he is bound by his Religion to keep his Cloyſter, &c. And if the Lord might take him out of his houſe, not hath power thoſe three things afore ſpecified.

¶ (b) *Enter en religion & eſt profeſſe.* That is intended (as hath been ſaid) when he is regular and profeſt under certain rules, as to become one of the four orders of Friers (that is to ſay) Freres minors, Auguſtines, Preachers, or Carmelites, or become a Monk, Canon, or Nun, &c. Qui ad vivendum regulariter ſe aſtringunt, ſive ſunt Monachi, ſive Canonici regulares, ſive ſanctimoniales. For all theſe are regular and Votaries, and are dead perſons in Law, but ſo are not the ſecular perſons, as Prebends, Parſons, Vicars, &c.

(b) Britton c. 31. f. 79. Doct. & Stud. f. 141.

4. H. 4. cap. 14.

And therefore it is holden in our Books, (c) that if a ſecular Prieſt taketh a Wife and hath iſſue and dieth, the iſſue is lawful and ſhall inherit as heir to his Father, &c. for (as it was then holden) the marriage was not void, but voidable by divorce, and after the death of either party no divorce can be had.

(c) 21. H. 7. 39. 19. H. 7. tit. baſtardy. 33. 5. E. 2. tit. Nonability 26 47. E. 3. caſu uſt.

But if a man marrieth a Nun, or a Monk marrieth, theſe marriages were holden void, and the iſſues baſtards, becauſe (as it was then holden) the marriage was utterly void; for that the Nun and the Monk (as Littleton here ſaith) were dead perſons in Law. And that is the reaſon pleaded by Littleton, wherefore a Villein being profeſſed in Religion cannot be ſeiſed by the Lord, becauſe he is dead in Law, and yet his blood or bondage is not thereby altered, but his perſon in reſpect of his profeſſion only priviledged. (d) In decretalibus ſtatutum eſt quod nullus Epiſcopus ſpurios aut ſerves donec à dominis ſuis fuerint manumiſſi ad ſacros ordines promovere præſumat. But notwithſtanding his perſon is priviledged till he be degraded. And ſo it is holden in our old Books. (e) If a villein

(d) Glanvil l. 5. c. 5. Britton f. 79. & 82.

(e) Fleta l. 2. c. 44. Britton ubi ſupra.

lain be made a Knight, for the honour of his degree his person is priviledged, and the lord cannot seize him until he be disgraded. Nullam vilem personam natione spurium, vel servilis conditionis ad militiæ strenuitatis ordinem promoveri licebit, sed cum à Dominis suis petantur ut nativi, ipsis primo degradatis, statim ad judicium procedatur.

til ne viveroit cõe un mort person, ne solonq; son Religion, le quel serroit inconvenient, &c.

then he should not live as a dead person, not according to his Religion, which should be inconvenient, &c.

(f) F.N.B.78.b. 30.E.1. tit.villen.46.33.E.3. ibid.21. 18.E.2.ib.30.46.E.3.6. 4.E.4.25.1.H.4.6.13.E. 1.Villen.36. 18.Ass.10. Doct.& Stud.141.Mirror.c.2.sect.18.acc.

¶ *Si un frank home prent un niefe.* (f) Some have holden that by this Marriage the Wife shall be free for ever, but the better opinion of our Books is, that she shall be priviledged during the coverture only, unless the Lord himself marrieth his Niefe, and then some hold, that she shall be free for ever.

If a Niefe be regardant to a Mannor, and she taketh a freeman to husband by licence of the Lord, and the Lord maketh a feoffment in fee of the Mannor, the husband dieth, the Feoffee shall not have the Niefe but the Feoffor, for that during the marriage she was severed from the Mannor. And so is the Book 19. Ass. (which is falsly printed) to be understood.

(g) 16.H.3.nup.obiit 17 8.H.3.breve 789.

(g) If two Coparceners be of a Villain, and one of them taketh him to husband she and her husband shall not have a nuper obiit against her Coparcener, but after the decease of her husband she shall.

(h) Vide Britton fo. 82. Fortesc.c.43.46.E.3.6.a

¶ (h) *Mes son remedie est daver un action vers le Baron, &c.* Albeit marriage is lawful, yet when it worketh a prejudice to a third person, an action in this case lieth against the husband to the value of his lois. And albeit he did not know her to be a Niefe, yet the Action lieth against him, for he must take notice thereof at his peril, (i) unless she be out of the service of the Lord and vagarant, and then if one not knowing her to be a Niefe marrieth her, some say that in that case no Action lieth against the husband. (k) And likewise the Lord shall have an action against those that were the means to make the Villain a Knight.

(i) 7 R.2.tit.barre 240.

(k) Britton fo.82. b.

31.H.6.c.5.12 H.7.c.7. 11.H.4.5. b.

¶ *Sovereigne.* Præcipuus, Chiefe, as here sovereigne del meason is the chief of the house.

31.H.8.c.29.

¶ *Si non que il soit deraigne.* This word (deraigne) cometh of the French word derayer, or deraigner, that is to say, to displace or to turn one out of his order, and hence cometh deraignment a displacing, or turning out of his order. So when a Monk is deraigned, he is degraded and turned out of his Order of Religion, and become a lay-man.

40.Ass.27.per Finchden.

¶ *Le quel serra inconvenient.* Ab inconvenienti is a good Argument in Law, as Littleton often observeth. And here Littleton concludeth, that the Lord cannot take a Monk out of his house, for that it should be inconvenient, which Littleton here sheweth, for diuers reasons, and therefore unlawful. And the inconvenience is, that where a man of Religion should live according to his profession in Religion, by the taking of him out he should not.

¶ *Si le Seignior luy puissoit prender, &c.* By this it appeareth, that if a man detaineth a Villain in his house, the Lord of the Villain may take him out of the house, for here the impediment wherefore the Lord could not take him out of the house, was, for that the Villain was a Monk professed. And so in case of the Wardship here next following.

Sect. 203.

¶ *Briefe de ravishment de garde.* This Writ is given by the Statute of W.2. cap. 35. in verbis conceptis, the words of which Writ be, that the defendant, Talem hæredem cujus maritagium ad ipsum A.

¶ EN meisme le maner est, si soit gardeine en chivalrie de corps & de fee dun enfant deins age, si lenfant quant

¶ IN the same manner it is, if there be a Gardian in Chivalry of the body and land of an infant within age, if the infant

si

il vient al age de 14 ans entra en Religion, & est profesſe, le garden nad auter remedy (quant a le garde de le corps) forſque brebe de ravishment de garde envers le ſovereign de le meaſon. Et ſi aſcun eſtant de plein age, que eſt coſin & heir del enfant enter en le terre, le gardein nad aſcun remedie quant al garde de la terre, pur ceo que leintrie del heire lenfant eſt congeable en tiel caſe.

when he comes to the age of 14 years entreth into religion, and is profeſt, the Gardian hath no other remedy (as to the wardſhip of the body) but a Writ of raviſhment *de garde* againſt the ſovereign of the houſe. And if any being of full age who is couſin and heir of the infant entreth into the Land, the gardian hath no remedy as to the wardſhip of the land, for that the entry of the heir of the infant is lawful in ſuch caſe.

pertiner, &c. rapuit & abduxit, &c. contra pacem. Now Rapere ſignifieth properly to take away by violence and force. And when the Sovereign took and admitted the Ward into his houſe to be profeſſed, this in judgment of Law is a raviſhment of the ward and as it appeareth in our Books before the ſaid ſtatute there lay a general action of treſpaſs in that caſe. Lib 9. Doctor Huſſeys caſe. fol. 72.

¶ *Apres lage de 14 ans, &c.* Our Author mentioneth this age, becauſe it is prohibited by the ſtatute of 4. H. 4. that no child ſhall be received into any houſe of religion before that age without conſent of his parents and gardians, &c. 4. H. 4. cap. 17.

¶ *Le gardein nad aſcun remedie, &c.* Here it appeareth that by the profeſſion of the Ward, the Lord loſeth the Wardſhip of the land, becauſe he is Civiliter mortuus, a dead man in Law, and cannot hold any inheritance, neither can the gardian continue the wardſhip of the land, becauſe by the civil death of the ward the inheritance is deſcended to another, who is either to be in ward, or pay relief. So as in this caſe the gardian hath Damnum, but it is abſque injuria, becauſe he loſeth the Wardſhip of the land by act of Law, viz. the deſcent thereof to another, and therefore the Law giveth to him no remedy in this caſe, neither by any formed writ, nor by action upon his caſe, for Littletons words are general, (he hath not any remedy.)

Sect. 204.

¶ Item, en mults divers caſes le Sñr poit faire manumiſſion & enfranchiſement a ſon villein. Manumiſſion eſt properment, quãt le Sñr fait un fait a ſon villein de luy enfranchiſer, Per hoc verbum (Manumittere) quod idem eſt quod extra manum, vel extra poteſtatem alterius ponere. Et pur ẽ q̃ per tiel fait le villein

ALſo in many and divers caſes the Lord may make manumiſſion and enfranchiſement to his Villain. Manumiſſion is properly when the Lord makes a Deed to his Villain to enfranchiſe him by this word (*Manumittere*) which is the ſame as to put him out of the hands and power of another. And for that that by ſuch Deed

¶ M *Anumiſſion.* (l) Manumittere, quod idem eſt quod extra manum vel poteſtatem ponere. (l) Glanvil l. 5. c. 5. Britton fo. 78. &c. 82. 97. 110. Fleta l. 3. c. 13. & l. 2. c. 44.

Quia quamdiu quis in ſervitute eſt, ſub manu & poteſtate domini ſui eſt.

Qui in poteſtate domini ſui eſt, in manu domini ſui eſſe dicitur, ſed poſtquam manumiſſus eſt, ab illo liberabitur, ergo dicitur quaſi extra manum, id eſt, extra poteſtatem domini ſui miſſus. And here is to be noted (as in many other places is obſerved) what regard Littleton hath to the true Etymologies of words.

¶ (m) *Enfranchiſement.* (Hereby Littleton explaineth Manumiſſion) and (m) Mirror c. 2. Sect. 18.

is derived from the French word Franchise; that is, liberty, and in the common Law it hath divers significations: Sometimes the incorporating of a man to be free of a Company or Body Politick, as a free man of a City, or Burgess of a burrough, &c. sometimes to make an Alien a Denison, and here to manumise a villain or bondman.

est mis hors de la main & de la poier son Seignior il est appell' Manumission. Et illint chescun maner de enfranchisement fait a un villein poit estr̄ dit Manumission.

the Villain is put out of the hands and out of the power of his Lord it is called Manumission. And so every manner of infranchisement made to a Villain, may be said to be a Manumission.

So as this word (Enfranchisement) is more general then Manumission, for that is properly applied to a Villain, and therefore every Manumission is an infranchisement, but every infranchisement is not a Manumission. (n) There be two kinds of Manumissions, one express, and the other implyed. Express, when the Villain by deed in express words is manumised and made free: the other implyed, by doing some act, that maketh in judgment of Law the Villain free, albeit there be no express words of Manumission or Infranchisement.

(n) Mirror c.2. Sect. 18.

(o) Forteſcue c.46. (o) If a Villain be manumised, albeit he become ingrateful to the Lord in the highest degree, yet the Manumission remains good: and herein the Common Law differeth from the Civil Law; for, Libertinum ingratum leges civiles in pristinam redigunt servitutem, sed leges Angliæ semel manumissum semper liberum judicant, gratum & ingratum.

There be also some cases where the Villain shall be privileged from the seisure of the Lord, albeit he be not absolutely manumised or infranchised. Sometimes Ratione loci, (p) as if a villain remain in the antient demean of the King a year and a day without claim or seisure of the Lord, the Lord cannot have a Writ of Nativo habendo, or seise him so long as he remains and continues there, and the reason of this was in respect of the service he did to the King in plowing and tillage of the demeans, and other labours of husbandry for the Kings benefit. And herewith agree old Books (q) which say that this immunity was sometime granted by common consent to the King for his profit, and for the help or ease of his Villains. (r) If a Villain be a Priest of the Kings Chappel, the Lord cannot seise him in the presence of the King, for the Kings presence is a privilege and protection for him. Sometime Ratione professionis, (s) as if a Villain be professed a Monk, or a Niefe a Nun, as hath been said. (t) Sometime (as some have said) Ratione dignitatis, as if the Villain be made a Knight &c. Sometime Ratione matrimonii, as if a Niefe marry a freeman, she is privileged during the marriage, but not absolutely enfranchised, for if her husband dye, she is Niefe again, unless the Lord himself marrieth the Niefe, and then she is infranchised for ever, as hath been said before. And it shall not be amiss to observe the wisdom of our Antients with what solemnity (for more surety thereof) Manumissions were made: Qui servum suum liberat, in Ecclesia vel mercato vel comitatu vel hundredo coram testibus & palam faciat, & liberas ei vias, & portas conscribit aperas, & lanceam & gladium vel quæ liberorum arma in manibus ei ponat. Our Author having spoken of an express manumission, here follows infranchisements in Law.

(p) 39.E.3.6.b. F.N.B.79.a.

(q) Glanvil.l.5.c.5. Fleta l.2.c.44. Brit.f.79. Mirror c.2. Sect. 18.

(r) 27.Ass.p.49.

(s) Glanvil l.5.c.5.

(t) Britton ubi supra.

Lil. Rub. cap. 78.

Sect. 205.

FOr when the Lord enableth the Villain to have an Action against him as for Debt or Annuity, &c. or giveth to the Villain a certain and fixed estate in Lands, Tenements, or hereditaments, as a Lease for years, this amounteth to an infranchisement not only during the years, but for ever, (u) and albeit the lease be made to the Villain without Deed, yet it is an infranchisement for ever.

(u) 50.E.3. tit. vil.25. 11.H.7.13.

CAury si le Sr̄ fait a son villein un Obligation p̄ certeine somme dargent, ou grant a luy per son fait un annuity, ou lessa a luy per son fait terres ou tenements pur terme des ans, le villein est enfranchise.

ALso if the Lord maketh to his villain an Obligation of a certain sum of money, or granteth to him by his Deed an annuity, or lets to him by his Deed Lands or Tenements for term of years, the Villain is infranchised.

Sect.

Sect. 206.

¶ AUry ſi le Sñr fait un feoffment a ſon villein daſcun terres ou tenemts per fait, ou ſans fait, en fee ſimple, fee tail, ou pur terme de vie, ou ans, q̃ a luy livera ſeiſin, ceo eſt un enfranchiſement.

ALſo if the Lord maketh a feoffment to his Villain of any Lands or Tenements by Deed or without Deed in fee ſimple, fee tail, or for term of life or years, and delivereth to him ſeiſin, this is an enfranchiſement.

This is evident and agreeth with our Books. Vide 24. E. 3. 32. 12. H. 3. tit. Vill. 42.

Sect. 207.

¶ MEs ſi le Sñr fait a luy un leaſe des terres ou tenemẽts, a tener a voluntle Sñr, per fait, ou ſans fait, ceo neſt aſcun enfranchiſemẽt pur ceo q̃ il nad aſcun mãner d̃ certainty ne ſuertie de ſon eſtate, mes le Sñr luy poit ouſter quant il voilet.

BUt if the Lord maketh to him a leaſe of lands or tenements, to hold at will of the lord by deed or without deed, this is no enfranchiſement, for that that he hath no manner of certainty or ſurety of his eſtate, but the Lord may ouſte him when he will.

¶ *PEr fait.* So as a Deed made to a Villain by the Lord, is no infranchiſement, when the Deed transferreth no certain or fixed Eſtate, but revocable at the Lords will. If the Lord releaſe to his Villain all his right in black acre, and the Villain is not thereof ſeiſed, this is no infranchiſement, becauſe it is void and can give no cauſe of Action. If the Lord attorneth to his Villain, this is no infranchiſement. 11. H. 7.

Sect. 208.

¶ AUry ſi l' Sñr ſuiſt envers ſon villein un Præcipe quod reddat, ſil recover, ou ſoit nonſue apres appearance, t̃ eſt un manumiſſion, pur ceo q̃ il puiſſoit loyalmẽt enter en la terre ſans tiel ſuit. En meſme le manner eſt, ſil ſuiſt envers ſon villein un action d̃ debt, ou daccount, ou de covenãt,

ALſo if the Lord ſueth againſt his Villain a *Præcipe quod reddat*, if he recover or be nonſuit after appearance, this is a manumiſſion, for that he might lawfully have entred into the Land without ſuit. In the ſame manner it is, if he ſue againſt his Villain an Action of debt, or account, or of covenant, or of

¶ *SI Seignior ſuiſt envers ſon villein un* Præcipe quod reddat, &c. *ceo eſt un manumiſſion.* And the principal reaſon hereof is, for that by this ſuit he enableth the Villein to be a perſon able to render him the Land by courſe of Law, where the Lord without any ſuch ſuit might have entred. (a) But if the Tenant in tail be of a Mannor whereunto a Villain is regardant, and enfeoffeth the Villein of the Mannor and dieth, the iſſue ſhall have a Formedon againſt the Villain, and after the recovery of the Mannor he ſhall ſeiſe the Villain. And (a) 24. E. 3. Diſcon. 16. Vide Britton 78. & 126.

the reaſon is for that he could not ſeiſe the Villain till he had recovered the Mannor which was the principal, and at the time of the writ brought, he was no Villain.

The Covenant inſrolles the Villain of the Lord, and an ſtranger upon colluſion, in this caſe although the Lord may enter upon the Villain by the moity, yet may he have a writ of Ward againſt them both without infranchiſement of the Villain, for if the Lord ſhould enter upon the Villain, then ſhould his ſeigniory be ſuſpended, and then could not he have a writ of Ward againſt the other.

The Lord upon a writ of Covenant brought by the Villain, levies a fine to his Villain of Land which is antient Demeſne, the Lord of whom the Land is holden reverſeth the fine in a writ of Deceit, albeit the Authority and juriſdiction of the Court is diſproved, and that the Lord of the Villain ſhall be reſtored to the Land given by the fine, yet is it an enfranchiſement, for that he anſwered to the writ of Covenant, and the fine was voidable, and not void, and therefore being once an enfranchiſement, it cannot be avoided by the reverſing of the fine.

¶ *Soit non ſue (id eſt) non eſt proſecutus breve ſuum.* For by the Law the Plaintiff is firſt Agent at every continuance, and therefore the Record ſaith, Quod perens ſeu querens (naming them) obtulit ſe, who if he be called, and make default, then he is ſaid to be Nonſuit, id eſt, non eſt proſecutus, &c.

By Littleton here it appeareth that there is a Nonſuit before appearance at the return of the writ, or after appearance at ſome day of continuance. (x) The difference between a Nonſuit and a Retraxit on the part of the Demandant or Plaintiff is this. A Nonſuit is ever upon a demand made when the Demandant or Plaintiff ſhould appear, and hemakes default. A Retraxit is ever when the Demandant or Plaintiff is preſent in Court (as

ou de Treſpaſſe, ou de huiuſmodi, ceo eſt un enfranchiſement, pur ceo que il puiſſoit empriſon le villein, & prender ſes biens ſans tiel ſuit. Mes ſi le ſeignior ſuiſt ſon villeine per appeale de felony, ou il fuit endict de ceo devant, ceo ne enfranchiſera pas le villein coment que le matter de lappelle ſoit trove encounter le ſeignior, pur ceo que le Seignior ne puiſſoit aver le villeine deſtre pendue ſans tiel ſuit. Mes ſi le villeine ne fuit endict de meſme le felonie, devant lappeale fue enuis luy, & puis eſt acquite de ceſt felony, iſſint que il recovera dammages envers ſon ſeignior pur le faux appeal, donques le villeine eſt enfranchiſe, pur la cauſe de le iudgement de dammages a luy deſtre doñ envers ſon ſeignior. Et pluſors auts cales & matters y ſont per queux un villein poit eſtre enfranchiſe envers ſon Seignior, &c. Sed de illis quære.

Treſpaſs, or of ſuch like, this is an infranchiſement, for that he might impriſon the Villain, and take his goods without ſuch ſuit. But if the Lord ſue his Villain by Appeal of Felony, where he was indicted of the ſame before, this ſhall not enfranchiſe the Villain, albeit that the matter of appeal be found againſt the Lord, for that the Lord could not have the Villain to be hanged without ſuch ſuit. But if the Villain were not indicted of the ſame Felony, before the appeal ſued againſt him, and afterward is acquitted of this Felony, ſo as he recover damages againſt his Lord for the falſe Appeal, then the Villain is infranchiſed, becauſe of the judgment of damages to be given unto him againſt his Lord. And many other caſes and matters there be by which a Villaine may be enfranchiſed againſt his Lord, &c. But enquire of them.

(x) Lib. 8. fo. 58 62. Bechers caſe. 3. H. 6. 13. Brooke tit. Nonſuit 1. 8. H. 6. 7. 50. E. 3. 12.

(as regularly he is ever by intendment of Law until a day be given over, unless it be where a verdict is to be given, for then he is demandable.) And this is in two sorts, one Privative, and the other positive; Privative, as upon demand made, that he make default, and depart in despight of the Court, and then the entry is, (y) Et postea eodem die devenit ad barram prædict. tenens, & prædict' petens tunc solenniter exactus non venit, sed à secta sua prædicta in contemptum Curiæ se retraxit, ideo consideratum est, &c. Positive, as when the entry is, Et super hoc idem quereris dicis, quod ipse non vult ulterius placitum suum prædictum prosequi, sed abinde omnino se retraxit, &c. ideo, &c. Another form thereof is, Quod idem querens fatetur se (seu cognovit se) ulterius nolle prosequi versus prædict. detend. &c. de placito prædicto. (z) A departer in despight of the Court is on the part of the Tenant, and is, when the Tenant or Defendant after appearance and being present in Court upon demand makes departure in despight of the Court, and then the entry is, Et prædict' tenens seu defendens licet solenniter exactus non reve-nit, sed in contemptum Curiæ recessit & defaltam fecit, ideo, &c. It is called a retraxit, because that word is the effectual word used in the entry, as before it appeareth, and it is ever on the part of the Demandant or Plaintiff. (a) Another difference between a Retraxit, and a Nonsuit is, that a Retraxit is a bar of all other actions of like or inferiour nature: Qui semel actionem renunciavit amplius repetere non potest. But regularly a Nonsuit is not so, but that he may commence an action of like nature, &c. again. For it may be, that he hath mistaken somewhat in that Action, or was not provided of his proofs, or mistaking the day or the like. But yet for some special reasons, Nonsuit in some Actions is peremptory.

(y) Tr. 5. H. 6. Rot. 320. In Com. Banco.

(z) F. N. B. 78. f. & 108. d. 19. E. 2. Villein 31.

(a) Lib. 8. ubi supra.

In a Quare impedit, if the Plaintiff be Nonsuit after appearance, the Defendant shall make a title, and have a Writ to the Bishop, (b) and this is peremptory to the Plaintiff, and is a good bar in another Quare impedit, and the reason is, for that the Defendant had by judgment of the Court a Writ to the Bishop, and the incumbent that cometh in by that Writ shall never be removed, which is a flat bar as to that presentation, and of this opinion is Littleton in our Books. And the same Law, and for the same reason it is in the case upon a discontinuance.

(b) 5. E. 3. 35. 2. H. 5. 3. H. 6. 15. 22. H. 6. 44. 45 33. H. 6. 1. 55. 19. E. 4. 9. 21. E. 4. 2. b. &c. F. N. B. 38. k.

(c) In a writ De nativo habendo, Nonsuit after appearance is peremptory, for thereby the villain is infranchised. And so it is if two be Plaintiffs in a Nativo habendo, if one be nonsuit this is the nonsuit of both, and no summons and severance doth lie in that case, albeit it be a real action. And this is in favorem libertatis, for in a Libertate probanda, Nonsuit after appearance is not peremptory, neither is the nonsuit of the one, the nonsuit of both.

Lib. 7. f. 27. b. Sir Hugh Portmans case.

(c) 6. E. 2. Vill. 26. 12. E. 2. ib. 28. 19. E. 2. ib. 31. F. N. B. 78. c. 4. E. 2. Nonsuit. 29.

(d) Nonsuit in an appeal of Murder, Rape, Robbery, &c. after appearance is peremptory, and this is in favorem vitæ, for if the Defendant be acquitted, and take out process upon the Statute of W. 2. against the Jhettors, or if he purchase his original Writ, for that cause he may be nonsuit.

(d) 9. H. 4. 1. 12. Stamf. Pl. Com. 148. a. & 171. c. 22. Ass. 97. Fitz. Cor. 184. 22. E. 3. 6. 47. E. 3. 16. 7. H. 7. 5. 40. E. 3. Da. 77. 17. E. 2. Coron. 386. 2. E. 2. Action sur Lest. 28.

(e) If the Plaintiff in an appeal of Mayhem be Nonsuit after appearance, it is peremptory, for the Writ saith, Felonicè maihemavit, and therefore the nonsuit is peremptory.

(e) 43. Ass. 39. 40. Ass. 1.

(f) In an Attaint of the Plaintiff after appearance be nonsuit, it is peremptory, and the reason is for the faith that the Law gives to the verdict, and for the terrible and fearful judgment that should be given against the first Jury if they should be convicted, and therefore upon the Nonsuit, the Plaintiff shall be imprisoned, and his pledges amerced. But if the process in an Attaint be discontinued, the Plaintiff may have another writ of Attaint, because upon the Nonsuit there is a judgment given, but not upon the discontinuance. Note, It is truly said that Exceptio probat regulam, for these cases excepted stand upon their special and particular reasons, and fall not within the general reason of the rule. It is a general rule, that nonsuit before appearance is not peremptory in any case, for that a stranger may purchase a Writ in the name of him that hath cause of action, as shall be said hereafter in this Section.

(f) 32. Ass. 13. 19. Ass. 13. 20. E. 3. attaint. 42. 22. E. 3. 7. F. N. B. 108. d.

(g) In real or mixt actions the nonsuit of one Demandant is not the nonsuit of both, but he that makes default shall be summoned and severed, but regularly in personal actions, the nonsuit of the one is the nonsuit of both, unless it be in certain particular cases.

(g) 11. H. 6. 23. 35. F. N. B. 35. b. 19. E. 3. tit. Sev. 14. 3 E. 2. Nonsu. 18. 19. E. 3. Sev. 16. 12. E. 3. ib 38. E. 3. 9. 29 H. 6. 45. 38. E. 3. 35. 41. E. 3. Nonsuit 10. 45. E. 3. 10. 2. H. 4. 2.

(h) In personal actions brought by Executors there shall be Summons and severance, because the best shall be taken for the benefit of the dead. And so it is in an Action of Trespass as Executor for goods taken out of their own possession. Like Law in an account as Executors by the retest of their own hands.

(h) 42. E. 3. 13. 48. E. 3. 14 28. H. 6. 3. 11. E. 2. Sev. 26 13. E. 3. ib. 15. 18. E. 2. ib. 28. 5. E. 3. ibid. 20. 7. E. 3. 12.

(i) In an Audita querela concerning the personalty, the Nonsuit of the one is not the Nonsuit of the other, because it goeth by way of discharge and freeing of themselves, and therefore the default of the one shall not hurt the other.

(i) 15. E. 3. Sever. 23. L. 6 f. 25. Ruddocks case

(k) In a Quid juris clamat, the nonsuit of the one is the nonsuit of both, because the Tenant cannot attorn according to the grant.

(k) 20. E. 3. Sever. 17.

(l) Some actions follow the nature of those actions whereupon they are grounded, as the Writs of Error, Attaint, Scire facias, and the like. If a real action be brought by several Præcipes against two or more, if the Demandant be Nonsuit against one, he is Nonsuit against

(l) 47. E. 3. 6. b. 47. Ass. 3 29. Ass. 34. 7. H. 4. 45. 34. H. 6. 31. 25. H. 6. 19. 29. E. 3. 37. lib. 6. ubi sup. 22. H. 6. 42. 4. E. 4. 33. 19. E. 2. Nonsuit 32. 18. E. 3. ibid. 31. 20. E. 3. ib. 26. 27. 19. E. 3. ib. 12. 3. E. 3. ibid. 17. 38. E. 3 9. 20. H. 6. 45. 44 E. 3. 16. 19. E. 3. Severance 16.

againſt all, for as to the Demandant it is but one Writ under one Teſte. Note, Severance is twofold, viz. by Summons ad ſequendum ſimul, and that is when one of the Demandants or Plaintiffs never appeared, and by award of the Court of Nonſuit without any Summons, and that is after appearance.

(m) 6.R.2. Nonſuit 13. 25.H.8.Nonſuit Br. 68. 20.H.7.5.

(m) The Kings Majeſty cannot be Nonſuit, becauſe in judgment of Law, he is ever preſent in Court, but the Kings Attorney, Qui ſequitur pro Domino Rege, may enter an ulterius non vult proſequi, which hath the effect of a Nonſuit, but in an Information by an Informer, qui tam, &c. the Informer may be Nonſuited.

(n) 2.H.4.c.7. 3.E.3.21 47.E.3.1.2. 3.E.4. f.11.

(n) At the Common Law upon every continuance or day given over before judgment, the Plaintiff might have been Nonſuited, and therefore before the Statute of 2. H. 4. after verdict given, if the Court gave a day to be adviſed, at that day the Plaintiff was demandable, and therefore might have been Nonſuit, which is now remedied by that Statute.

(o) 2 H.5.5.8.R.2.Nonſuit 34.

(o) But after Demurrer in Law joyned, if the Court doth give a day over, at that day the Demandant or Plaintiff is demandable, and therefore may be Nonſuit, for that is not holpen by any Statute.

(p) 9.H.7.1. 21.E.3.32. Lib.11. f.39.41. Metcalfs caſe.

(p) And after an award to account, the Plaintiff may be Nonſuit, and ſo note a diverſity between an Interlocutory award of the Court, and a final judgment.

By theſe few inſtructions you ſhall the more eaſily underſtand the Books of terms and years, and other Authorities of Law. And here (to return to Littleton) it is to be noted, that albeit the Lord be Nonſuit, yet the infranchiſement of the Villain doth remain, for that grew by the appearance to the Writ, and cannot be taken away by the Nonſuit ſubſequent. So it is if the Writ do abate, yet the infranchiſement remains.

(q) 7.H.4.8. 11.H.4.13. 9.E.4.23.7.H.4.8.2. 7.H.7.6.b. 5.H.7.15.

¶ (q) *Apres apparance,* for otherwiſe a ſtranger may purchaſe a Writ in his name, and therefore Littleton materially added theſe words, after appearance.

¶ *Præcipe.* There be three kinds of Præcipes. 1. A Præcipe quod reddat, whereof Littleton here ſpeaketh. 2. A Præcipe quod permittat, and 3. A Præcipe quod faciat, whereof you may read plentifully in the Regiſter, and Fitzherberts natura brevium, and belongs not properly to this Treatiſe.

¶ *Accounts.* Of this ſufficient hath been ſaid before.

Vid.ſect.748.l.4.f.80. Nokes caſe. F.N.B.145.

¶ *Covenant.* Conventio. Hereof there be two kinds, viz. a Covenant perſonal, and a Covenant real: and a Covenant in Deed, and a Covenant in Law.

(r) W.2. cap.12. 22.Aſſ.p.39. 33.H. 6.2. 14.H.7.2.40.Aſſ.18. 40.E.3.42.

¶ *Ou il fuit endite de ceo.* (r) For if the Villain be not firſt indicted of it, then upon the acquital of the Villain, the Villain ſhall recover damages againſt the Lord by the Statute of W. 2. Quia multi per malitiam, &c. and conſequently ſhall be enfranchiſed. But if the Villain be formerly indicted of the Felony, then though the Villain be acquitted upon the Appeal, he ſhall recover no damages againſt the Lord. For wheſoever the Lord giveth to the Villain a juſt cauſe of Action he is infranchiſed. (f) And therefore if the Lord kill his Villain, his Son and Heir ſhall have an Appeal, and thereby his Heir ſhall be infranchiſed, becauſe the offence of the Lord, gave to the Heir a juſt cauſe of action againſt the Lord.

(f) Kelway 134.

Sect. 209.

¶ *Que il ad eſtre Cuſtome, &c.*

Here ſome may object that ſuch a Cuſtom may have a lawful beginning, for Littleton in the beginning of this ¶ Chap. ſect. 174. alloweth that (a) a freeman may take lands of the Lord to be holden of him, that is, to pay a fine for the marriage of his Son or Daughter, and therefore (b) ſome have thought that ſuch a cuſtom generally within the Mannor ſhould be good. But the

(a) 10.E.3.23. Roger de Vales caſe 15.E.3.aid.33 (b) 34.H.6.15.a per Lit.

¶ Item ſi Seignior dun manor voile preſcriber, que il ad eſtre cuſtome deins ſon manor de temps dont memory ne curt, que chefcun Tenant deins meſme le mannor ſi maria ſa file a aſcun home ſans licence de le ſeignior del man-

ALſo if the Lord of a Mannor will preſcribe that there hath been a cuſtom within his Mannor, time out of minde of man, that every Tenant within the ſame Mannor, who marrieth his Daughter to any man without licence of the Lord of the

nor

noz. ſerra fine, & ont faire fine al Seignior del mannoz pur l' temps eſteant, ceſt preſcription eſt void. Car nul doit faire tiels fines forſq; tantſolemẽt villeins. Car cheſcun franke home poit franklement marier ſa file a que pleiſt a luy & ſa file. Et pur ceo que ceſt preſcription eſt encounter reaſon, tiel preſcription eſt void.

Mannor, ſhall make fine, and have made fine to the Lord of the Mannor for the time being, this preſcription is void: For none ought to make ſuch fine but only Villains. For every free man may freely marry his daughter to whom it pleaſeth him and his daughter: and for that this preſcription is againſt reaſon, ſuch preſcription is void.

anſwer is, that though it may be ſo in a particular caſe upon ſuch a ſpecial reſervation of ſuch a fine upon a gift of Land, yet to claim ſuch a fine by a general cuſtom within the Mannor, is againſt the freedom of a freeman that is not bound thereunto by particular Tenure. But a cuſtom may be alledged within a Mannor, (b) That every Tenant (albeit his perſon be free) that holdeth in bondage or by native tenure, the freehold being in the Lord, ſhall pay to the Lord for the marriage of his Daughter without licence, a Fine: and it is called Marchet, as it were a Chete or Fine for marriage. And here Littleton ſaith, that none ought to pay ſuch fines

(b) 45.E.3.5. 14.H 6.15

but Villains, (that is) either villains of blood, or freemen holding in villenage or baſe Tenure. So note a diverſity between a free-holder and a freeman holding in Villenage: Villains uſe to pay to their Lords in acknowledgement of their bondage for their ſeveral heads, and thereupon it is called Chevage, Chevagium of the French word Chiefe, as it were the ſervice of the head. Of which Bracton ſaith, (c) Chivagium dicitur recognitio in ſignum ſubjectionis & dominii de capite ſuo. And ſometimes it is written Chivage, but more properly Chiefage. (d) Chevagium ſignifieth alſo a great miſpriſion for any ſubject to take ſummes of mony, or other gifts yearly in name of Chevage, becauſe they take upon them to be their chief heads or Leaders.

(c) Bracton l.1.c.10. Britton fol.79 b.

( ) 27.Aſſ.44.

¶ *Pur ceo que ceſt preſcription eſt encounter reaſon, ceo eſt void.* This contains one of the Maxims of the Common Law, viz. that all cuſtoms and preſcriptions that be againſt reaſon, are void.

Sect. 210.

¶ Mes en l' Coũty de Kent, ou tres & tenements ſont tenus en Gavelkind la ou per le cuſtome & uſe de temps dont memory ne curt, les fits males doient obelment enheriter, ceo cuſtome eſt allowable, pur ceo que il eſtoit oue aſcun reaſon, pur ceo que cheſcun fits eſt auxy graunde gentlehome come leigne fits eſt,

But in the County of *Kent* where lands and tenements are holden in Gavelkind, there where by the cuſtom and uſe out of mind of man the iſſues male ought equally to inherit, this cuſtom is allowable, becauſe it ſtandeth with ſome reaſon, for every Son is as great a Gentleman as the eldeſt Son is, and perchance will grow

¶ EN (e) *le County de Kent.* For that in no County of England, Lands (f) at this day be of the nature of Gavelkind of common right, ſaving in Kent only. But yet in divers parts of England, within divers Mannors and Seignories the like cuſtom is in force.

(e) Vide Leſtatute de Conſuetudinibus Kantiæ an.21.E.1. 2 E.3.12. 3.E.3.21.38.23.Aſſ.pl.12 8.E.3.42. b.

(f) Vide Mirror cap. 1. Sect. 3.

¶ *En Gavelkind.* That is, Gave all kind: for this cuſtom giveth to all the Sons alike.

¶ *Les fitz males inheriter.* And this is the general cuſtom extending to Sons. But yet (g) by cuſtom when one Brother dieth without iſſue, all the other

(g) 23.Aſſ.p'.21.

other brethren may inherit.

¶ *Chescun fitz est auxy grand gentile home come leigne fitz est.* By this it appeareth, that Gentry and Arms is of the nature of Gavelkind, for they descend to all the Sons, every Son being a Gentleman alike. Which Gentry and Arms do not descend to all the brethren alone, but to all their posterity: but yet Jure primogenitur æ, the eldest shall bear as a badge of his birthright, his Fathers Arms without any difference, for that as Littleton saith, Section he is more worthy of blood; but all the younger brethren shall give several differences, & additio probat minoritatem, and (h) hæreditas inter masculos jure civili est dividenda.

(h) Fortescue cap. 40.

¶ *Ou auterment peradventure il ne puissoit tielment cresser.* The reason of this is rendred by the Poet:

Horace.

Haud facile emergunt quorum virtutibus obstat
Res angusta domi.———

But now by the Statute of 31 H. 8. a great part of Kent is made descendable to the eldest Son, according to the course of the Common Law, for that by the means of that custom, divers antient and great Families after a few descents came to very little or nothing.

31. H. 8. c. 3. V. 18. H. 6. cap. 1.

In plures quoties rivos deducitur amnis,
Fit minor, ac undâ deficiente, perit.

Sect. 211.

Vide Sect. 165.

¶ *Per custome appel Burgh English.* Of this custom Littleton hath spoken before in the Chapter of Burgage. And in our Books there is a special kind of Borough English, (i) as, it shall descend to the younger Son, if he be not of the half blood, and if he be, then to the eldest Son.

(i) 32. E. 3. tit. Age 81.

(k) Mich. 10. Ja. Eliots case in Briefe de Faux judgement.

(k) Within the Mannor of B. in the County of Berke, there is such a custom, That if a man have divers daughters and no son, and dieth, the eldest daughter shall only inherit; and if he have no daughters, but sisters, the eldest sister by the custom shall inherit, and sometime the youngest. And divers other customs there be in like cases.

¶ Item, lou per custome appel Burgh English en ascun Burgh, le fits puisn̄ inherita touts les tenements, &c. cē custome estoit oue ascertaine reason, pur ceo que le fits puisne (sil fault peze & mere) per cause de son iuventute poit le pluis meins de touts ses freres luy mesme aider, &c.

ALso where by the Custom called Burrough English, in some Burrough the youngest son shall inherit all the tenements, &c. this custom also stands with some certain reason, because that the younger Son (if he lack father and mother) because of his young age, may least of all his brethren help himself, &c.

(l) Britt. 187. b.

And here with agreeth Britton, who saith, (l) De terres des anciens demeynes soit use solonque le ancient usage del lieu, dount en ascun lieu le tient len pur usage: que le heritage soit departable entre tours les enfants freres & sores, & en ascun lieu que le eigne avera tour, & en ascun lieu que le puisne frere avera tour.

¶ *Pur cause de son juventute poet le pluis meins de touts ses freres luy mesme aidre, &c.* Here by (&c.) are implied those causes wherefore a youth is less able to aid himself, &c. which the Poet briefly and pithily expresseth thus:

Imberbis

Imberbis Juvenis tandem Custode remoto,
Gaudet Equis, Canibusque & Aprici gramine Campi,
Cereus in vitium flecti, Monitoribus asper,
Utilium tardus provisor, prodigus æris,
Sublimis, cupidusque, & amata relinquere pernix. Horace

And again, no living creature more infirm than man.

Nil homine infirmum tellus animalia nutrit
Inter cuncta magis——— Homer.

Sect. 212.

¶ Mes si home voile prescriber, que si ascuns aũs fueront sur les demesnes de son mannor le damage, feasants, que le Seignior del mannor pur le temps esteant, ad use eux de distreiner, & le distresse retaine tanque fine fuit fait a luy pur le damage a sa volunt, cest prescriptiõ est void, pur ceo que il est encounter reason, que si tort soit fait a un home, que il de ceo serr̃ son Judge demesne: Car per tiel voy sil avoit dammages forsque al value dun mail, il puisoit assesser & aũ pur ceo C. l. que serroit encounter reason. Et issint tiel prescription, ou ascũ aut̃ prescription use (si ceo soit encounter reason) ceo ne doit estre allow devant Judges: Quia malus usus abolendus est.

But if a man will prescribe, that if any Cattel were upon the demeans of the Mannor, there doing damage, that the Lord of the Mannor for the time being hath used to distraiu them, and the distress to retain till fine were made to him for the damages at his will, this prescription is void: because it is against reason, that if wrong be done any man, that he thereof should be his own Judge; for by such way, if he had damages but to the value of an halfpeny, he might assess and have therefore C. li. which should be against reason. And so such prescription, or any other prescription used, if it be against reason, this ought not, nor will not be allowed before Judges, *Quia malus usus abolendus est.*

¶ *Si encounter reason que si tort soit fait a un home, que il de ceo serra son judge demesne.* For it is a Maxim in Law, Aliquis non debet esse judex in propria causa: * And therefore a fine levied before the Bailiffs of Salop, was reversed, because one of the Bailiffs was party to the fine, quia non potest esse judex & pars.

10.E.3.23. 4.E.3.54. 7.E.3.24.38.E.3.18. 2.H.3.4.3.H4.8.H.6.19 5.H.7.9. b. * Hil.4.H.4. Cor. Rege Salop.

¶ Malus usus abolendus est: And every use is evil, that is (as our author saith) against reason, Quia in consuetudinibus non diuturnitas temporis, sed soliditas rationis est consideranda.

And by this rule cited by our Author, at the Parliament holden at Kilkenny in Ireland, Lionel Duke of Clarence being then Lieutenant of that Realm, the Irish customs called there the Brehon Law, (for that the Irish call their Judges, Brehons) was wholly abolished, for that (as the Parliament said) it was no Law, but a lewd custome, & malus usus abolendus est.

An.40.E 3 at Kilkenny. The Brehon Law. Vide Sect. 265.

But our Student must know, that King John in the twelfth year of his reign went into Ireland, and there by the advice of grave and learned men in the Laws whom he carried with him, by Parliament de communi omnium de Hibernia consensu ordained and established, that Ireland should be governed by the

the Laws of England, which of many of the Irish men, according to their own desire, was joyfully accepted and obeyed, and of many the same was soon after absolutely refused, preferring their Brehon Law before the just and honourable Laws of England. Rex, &c. Baronibus, militibus, & omnibus libere tenentibus L. Salutem, Satis ut credimus vestra audivit discretio, quod quando bonæ memoriæ Johannes quondam Rex Angliæ pater noster venit in Hyberniam, ipse duxit secum viros discretos & legis peritos, quorum communi consilio, & ad instantiam Hybernensium statuit & præcepit leges Anglicanas in Hybernia, ita quod leges easdem in Scripturas redactas reliquit sub sigillo suo ad Scaccarium Dublin.

Rot. Pat. 11. H. 3. L. 5. f. 22. b. Calvins case

Rex Comitibus, Baronibus, militibus, & liberis hominibus & omnibus aliis de terra Hiberniæ salutem. Quia manifestè esse dignoscitur contra coronam & dignitatem nostram & consuetudines & leges regni nostri Angliæ quas bonæ memoriæ Dominus Johannes Rex pater noster, de communi omnium de Hybernia consensu, teneri statuit in terra illa, quod placita teneantur in curia Christianitatis de advocationibus Ecclesiarum & Capellarum vel de laico feodo vel de catallis quæ non sunt de testamento vel matrimonio. Vobis mandamus prohibentes quatenus hujusmodi placita in Curia Christianitatis nullatenus sequi præsumatis in manifestum dignitatis & Coronæ nostræ præjudicium, sciturí pro certo, quod si feceritis, dedimus in mandatis Justiciario nostro Hyberniæ, Statuta curiæ nostræ in Anglia contra transgressiones hujus mandati nostri cum Justicia procedat, & quod nostrum est exequatur. In cujus, &c. Teste Rege apud Winchcomb, 28 die Octobris, anno regni nostri 18. Et mandatum est Justiciario Hyberniæ, per literas clausas quod prædictas literas patentes publicè legi & teneri faciat.

Rot. pat. 18. H. 3. M. 17. N. 21.

Rex, &c. pro communi utilitate terræ Hyberniæ, & pro unitate terrarum, provisum est, quod omnes leges & consuetudines quæ in regno Angliæ tenentur, in Hybernia teneantur, & eadem terra eisdem legibus sub jaceat, ac per easdem regatur, sicut Johannes Rex cum illic esset, statuit & firmiter mandavit. Ideo volumus, quod omnia brevia de communi jure quæ currunt in Anglia similiter currant in Hybernia sub novo sigillo Regis: In cujus, &c. Teste meipso apud Woodstock. Wherein it is to be observed, That union of Laws is the best means for the unity of Countries. * Una & eadem lex esse debet tam in Regno Angliæ quam Hyberniæ, (m) Terra Hyberniæ inter se habet Parliamentum & omnimodas curias prout in Anglia, & per idem Parliamentum facit leges & mutat leges, & illi de eadem terra non obligantur per statuta in Anglia, quia hi non habent Milites Parliamenti.

Rot. pat. 30. H. 3.

* Tri. 13. E. 1. Coram rege in Thesaur. in longo placito.

(m) 2. R. 3. 12. In camera stellata. 1. H. 7. 3.

By an Act of Parliament (called Poynings Law) holden in Ireland, in the tenth year of Henry the seventh, it is enacted, That all Statutes made in this Realm of England before that time, should be of force and be put in ure within the Realm of Ireland, which (though it be by way of digression) is not unnecessary for our Student to know. But now let us hear our Author.

Some have divided Rents into four kinds, viz. Rent Service, Rent Charge, Rent Distrainable of Common Right, (whereof somewhat shall be said in this Chapter) and Rent Seck.

C. *Rent.* In Latin Redditus, (a) by some Dicitur à redeundo, quia retro it, & quotannis redit. * And others say it is derived of reddere, for that the Rent is reserved out of the profits of the land, & is not due till the tenant or lessee take the profits, for reddendo inde or solvendo, or reservando inde, or the like, (b) is as much to

(a) Fleta l. 3. c. 14. Britton c. 41. Mirror c. 2. sect. 16. Pl. Com. 132. b. * Li. 10. 148. Clans case.

(b) Pl. Com. 138. 139. &c. In Brownings and Bestens case. 35. H. 6. 34.

C Roys manets de Rents? sont, ceasascavoir, Rent service, Rent charge, & Rent seck: Rent service est lou le Tenant tient sa terre de son Seignior per fealty, & certain Rent, ou per homage, fealte, & certain Rent, ou per auts services & certaine Rent & si rent service

THree manner of Rents there be, that is to say, Rent service, Rent charge, and Rent seck. Rent service is, where the Tenant holdeth his Land of his Lord by fealty, and certain Rent, or by Homage, Fealty, and certain Rent, or by other Services, and certain Rent, and if Rent service at any day that

soit

ſoit aſcun ſour (que doit eſtre pay) adeterre, le Sñr poit diſtreiner pur ceo de common droit.

it ought to be paid, be behind, the Lord may diſtrain for that of common right.

ſay as the Tenant or Leſſee ſhall pay ſo much out of the profits of the Lands, for Reddere nihil aliud eſt quam accepium aut aliquam partem e juſdem reſtituere. Seu reddere eſt quaſi retro dare, and hereof cometh Redditus for a Rent.

Here note for the better underſtanding of antient Records, Statutes, Charters, &c. Gabel, or Gavell, Gablum, Gabellum, Gabellettum, Galbellettum, and Gavillettum, do ſignifie a Rent, Cuſtom, Duty, or Serbice, yielded or done to the King, or any other Lord, as Wallingford continet 176. Hagas, i. domos reſidentes 9. libras de gablo i. de redditu. And Oxford, hæc urbs reddebat pro theolonio & Gablo regi 20 l. & Sextarios melſis, comiti Alpharo 10. libras. And this is the legal ſignification thereof. Domeſday. Statutum de gavileito anno 10. E. 2.

¶ *Rent ſervice.* It is called a Rent ſervice, becauſe it hath ſome corporal ſervice incident unto it, which at the leaſt is fealty, as here it appeareth.

¶ *Sa terre.* (c) A Rent ſervice cannot be reſerved out of any inheritance but ſuch as is manurable, whereinto the Lord may enter and take a diſtreſs, as in Lands and Tenements, Reverſions, Remainders, and as ſome have ſaid out of the herbage of Lands, and regularly not out of any inheritances incorporeal, or that lie in grant. (d) By act of Law one rent or ſerbice may iſſue out of another, as if A. before the Statute of Quia emptores terrarum, had given Lands to B. to hold of him by fealty, and 10 ſhillings rent, and B. had made a feoffment in fee to C. &c. whereby there was a Meſnalty created, in this caſe C. ſhould hold of B. either by the ſame ſerbices the Law created, or ſuch as be ſpecially reſerved, and and B. did by operation of Law hold thoſe ſerbices of A. by fealty and ten ſhillings rent, that is to ſay, rent and ſerbice out of rent and ſerbice, and if the rent be behind, the Lord paramount may diſtrain upon the Land for his Rent, for both Meſnalty and Seigniory do iſſue out of the Land, the Meſnalty immediately, and the Seigniory mediately, which is worthy of due conſideration and obſervation. Vide Sect. 218. (c) 44.E.3.45.l.5.f.4. Seignior Mountjoys caſe 9.Aſſ.24. 30.Aſſ.5. 17.E.3.75. lib.7.fol.23. Buts caſe. Pl. Com. 139. (d) 3.H.6.21.5.H.7.36 21.H.7.39. 1.H.4.32. 10.H.6.12. 19. E. 3.tit. Gard.40. 21.H. 6.11.

¶ *Certaine rent.* (e) For the rent muſt be certain, or which may be reduced to a certainty, for Id certum eſt, quod certum reddi poteſt. (f) Continetur carta reddendo inde annuatim ad tales terminos vel faciendo inde talia ſervitia vel tales conſuetudines, quæ omnia debent eſſe certa & in carta expreſſa, &c. But of this I have ſpoken, Sect. 126. And the rent may as well be in delibery of Hens, Capons, Roſes, Spurrs, Bowes, Shafts, Horſes, Hawks, Pepper, Cummin, Wheat, or other profit that lieth in render, office, attendance, and ſuch like: as in payment of mony. (g) But a man upon his feoffment or condeyance cannot reſerve to him parcel of the annual profits themſelves, as to reſerve the beſture or herbage of the Land or the like, for that ſhould be repugnant to the grant, Non debet enim eſſe reſervatio de proficuis ipſis, quia ea conceduntur, ſed de redditu novo extra proficua. (e) Britton fol. 100. a. (f) Fleta l.3. c.14. (g) 38 H.6.38. a.

¶ *Poet diſtreine pur ceo.* For where there is fealty, &c, incident to the rent, there is a diſtreſs incident alſo thereunto. (h) But it is to be underſtood that for a rent or ſerbice the Lord cannot diſtrain in the night, but in the day time, and ſo it is of a rent charge: but for Damage feaſaunt one may diſtrain in the night, otherwiſe it may be the Beaſts will be gone before he can take them. (h) Mirror c.2.Sect.16. 10.E.3. Avowry 137. 11. H.7.5.

¶ *De common droit.* Of common right, (i) that is, by the common Law, ſo called becauſe the common Law is the beſt and moſt common birth-right that the ſubject hath for the ſafeguard and defence, not only of Goods, Lands, and Revenues, but of his Wife and Children, his Body, Fame, and Life alſo. So as the meaning of Littleton in this particular caſe is, that the Lord may diſtrain for this Rent of Common Right, that is, by the Common Law, without any particular reſerbation or proviſion of the party. And it is to be obſerved that the Common Laws of England ſometime is called Right, ſometime Common Right, and ſometime Communis juſticia. In the grand Charter the Common Law is called Right, rectum. Nulli vendemus, nulli negabimus aut differemus juſtitiam vel rectum. In the Statute of W. 1. c. 1. it is called Common droit. En primes voet le roy, & commande que le peace de S. Egliſe & de la terre ſoit bien garde & maintaine en touts points, & que common droit ſoit fait a touts auxibien aux poures, come aux riches ſauns regard de nulluy; which agreeth with the antient law in the time of King Edgar, Porro autem has populo quas ſervet proponimus leges, primum publici juris beneficio quiſquam fruitur, idque ex æquo & bono, ſive is dives ſive inops fuerit jus reddit'. And Fler. ſaith, Item quod pax Eccleſiæ & terræ inviolabiliter obſerv. & quod communis juſtit. ſingulis pariter exhibeatur. And all the Commiſſions & Charters for execution of Juſtice are, Facturi quod ad juſtitiam pertinet ſecundum legem & conſuetudinem Angliæ. So as in truth Juſtice is the daughter of the Law; for the Law bringeth her forth. And in this ſenſe (i) W.1.c.1.2.H.4 c.1. 7.H.4.c.1. 4.H.8. c.8. Lamb. fo.76. inter Leges Regis Edgari. Fleta, l.1.c.9.

Vid. Sect. 214. 216. 226. 252. 331.

being largely taken, as well the Statutes and Customs of the Realm, as that which is properly the Common Law, is included within Common droit. Littleton in this his Treatise nameth Common droit six times.

Sect. 214.

¶ *Sans fait.* For it is a rule in Law that a Rent service may be reserved without deed.

35. H. 6. 34.

¶ *En mesme le maner si lease soit fait, &c.* For these be rents services, because fealty is incident to these Rents, for (as it hath been said before) a lessee for life or years shall do fealty. And if a man make a Lease at will, reserving a Rent, the Lessee shall not do fealty, and yet the Lessor shall distrain for the rent of Common right.

Vide Sect. 131. 132.

¶ *Rendant*, cometh of the word Reddo, i. rem pro re dare, and signifieth yielding or repaying: but of this I have spoken before in this Chapter, Sect. 213.

¶ Et si home voyloit doner terres ou tenements a un auter en taile, rendant a luy certain Rent p an, il de common droit poit distreiñ pur le rent arere, coment que tiel done fuit fait sans fait, pur ceo que tiel Rent est Rent service. En ñ le maner est, si leas soit fait a un hõe pur terme de vie, ou dauter vie, rendant al lessor certain Rent, ou pur terme de ans rendant certaine Rent.

And if a man will give Lands or Tenements to another in the tail, yielding to him certain Rent by the year, he of common right may distrain for the Rent behind, though that such gift was made without deed, because that such rent is rent service: In the same manner it is, if a lease be made to a man for life or the life of another, rendring to the Lessor certain Rent, or for term of years rendring Rent.

Sect. 215.

¶ *Reversion.* Reversio cometh of the Latin word Revertor, and signifieth a return again; and therefore Reversio terræ est tanquam terra revertens in possessione donatori sive hæredibus suis post donum finitum, &c. as in the cases that Littleton here hath put.

¶ *Il covient que le reversion, &c. soit en le donor ou lessor, &c.* This is not to be understood only of a reversion immediately expectant upon the gift or lease. For if a man maketh a gift in tail, the remainder in tail reserving a rent, and keep the reversion in himself, this is a Rent service.

¶ *Reservant.* Reservant cometh of the Latin word Reservo, that is to pre-

¶ Mes ẽ tiel cas ou home sur tiel done ou lease voile reserver a luy rent service, il coviẽt que le reversiõ de les terres & tenemñts soit en le donor ou lessor, car si home voile faire feoffement en fee, ou voile doner terres en taile, le remaindre oustre en fee simple sans fait, reservant a luy certaine rent tiel reservãt est void, pur ceo que nul reversion remaine en le donor, & tiel tenant

But in such case where a man upon such a gift or Lease will reserve to him a Rent service, it behoveth that the reversion of the Lands and Tenements be in the Donor or Lessor. For if a man will make a feoffment in fee, or will give lands in tail, the remainder over in fee simple without deed, reserving to him a certain Rent, this reservation is void, for that no reversion remains in the Donor, and such

tient

tient la terre immediatm̃ de le ſeignioꝛ de que ſon donoꝛ tenoit, &c.

tenant holds his Land immediately of the Lord of whom his Donor held, &c.

bide foꝛ ſtoꝛe. As when a man departeth with his Land he reſerveth oꝛ prohibiteth foꝛ himſelf a rent foꝛ his own livelihood. And ſometime it hath the foꝛce of ſaving oꝛ excepting: ſo as (k) ſometime it ſerveth to reſerve a new thing, viz. a Rent, and (l) ſometime to except part of the thing in eſſe that is granted.

(k) 8.E.4.48. 26.Aſſ.pl.66.
(l) 35.H.6.34.

And it is to be underſtood that in the caſe of the gift in tail, leaſe foꝛ life oꝛ years, the fealty is an incident inſeparable to the reverſion, ſo as the Donoꝛ, oꝛ Leſſoꝛ cannot grant the reverſion over, and ſave to himſelf the fealty oꝛ ſuch like ſervice, but the Rent he may except, becauſe the Rent, although it be incident to the reverſion, yet it is not inſeparably incident. If a man maketh a gift in tail without any reſervation, the Donee ſhall hold of the donoꝛ by the ſame ſervices that he held over. (m) But otherwiſe it is of an Eſtate foꝛ life oꝛ years. foꝛ there if he reſerveth nothing, he ſhall have fealty only, which is an incident inſeparable to the reverſion, as hath been ſaid.

(m) Litt. fo.4. Old tenures 5. 38.E.3.7. 33.H.6.7.

¶ *Le remaindre ouſtre en fee ſimple ſans fait.* Here it appeareth that if a man maketh a gift in tail, the remainder in fee without deed, (n) the remainder is good and paſſeth out of the donoꝛ by the livery of ſeiſin, and ſo it is of a leaſe foꝛ life oꝛ years. the remainder over in fee foꝛ the particular eſtate, and the remainder to many intents and purpoſes, make but one eſtate in judgment of Law. Vide Sect. 60.

(n) 40.E.3.10.10.E.4.1 12.E.4.16.15.E.4.18. 18.E.4.12. 18.H.8.4. 3.H.7.13. F.N.B.219. 11.H.4.39. 38. E.3.36. 44.E.3.8.

¶ *Remaindre*, In legal Latin is remanere, coming of the Latin word remaneo, foꝛ that (o) it is a remainder oꝛ remnant of an Eſtate in Lands oꝛ Tenements expectant upon a particular eſtate created together with the ſame at one time, as in the caſes here of Littleton appeareth.

(o) Lib.2.fo.51. Cholmelies caſe.

Sect. 216.

¶ Et ceo eſt per foꝛce de leſtatute de Quia emptoꝛes terrarum, car debaunt le dit eſtatute ſi hõe feſoit un feoffement en fee ſimple, per fait ou ſans fait, rendant a luy & a ſes heires certaine rent, ceo fuit rent ſervice, & pur ceo il puiſſoit diſtreine de common droit, & ſil fuit nul reſervation daſcun rẽt ne õ aſcũ ſervice, uncoꝛe le feoffee tenuſt del feoffoꝛ per autiel ſervice que le feoffoꝛ tenuſt ouſtre de ſon Seignioꝛ procheine paramount.

AND this is by force of the Statute of *Quia emptores terrarum*, for before that Statute, if a man had made a feoffment in fee ſimple by deed or without deed yielding to him and to his Heirs a certain Rent, this was a rent ſervice, and for this he might have diſtrained of common right. And if there were no reſervation of any Rent nor of any ſervice, yet the Feoffee held of the Feoffor by the ſame Service as the Feoffor did hold over of his Lord next paramount.

¶ Quia emptores terrarum. Hereof is ſpoken before in the chapter of Frankalmoigne, Sect. 140

¶ *Per fait ou ſans fait, &c.* foꝛ all rent ſervices may be reſerved without deed (as hath been ſaid) and as it appeareth here.

And at the common law if a man had made a feoffment in fee by parol, he might upon that feoffment have reſerved a rent to him and his Heirs, becauſe it was a rent ſervice, and a tenure thereby created.

¶ *Et ſil fuit nul reſervation, &c. le feoffee tenuſt del feoffoꝛ per autiels ſervices, &c.* This is evident and agreeth with our Books (*) that in this caſe the Law created the tenure, wherein it is to be obſerved how the Law regardeth equity and equality without any proviſion oꝛ reſervation of the party.

(*) Britton fo.100. 2.E.3.33.25.E.3.gar.21. 49.E.3.10.22.Aſſ.pl.53. 7.H.4.14. 23.E.3.avowry 235. 4.H.6.Littl.cap.taile Sect.

Ipſæ etenim leges cupiunt ut jure regantur.

Sect.

Sect. 217.

Britton fol. 100. Fleta l. 3. c. 14. Vide Sect. 370.

¶ *Per fait indent.* It cannot be a Deed indented unleſs it be actually indented, for albeit the words of the Deed be, Hæc indentura, &c. yet if it be not indented indeed, it is no Indenture, but if the Deed be indented, albeit the words of the Deed be not hæc indentura, yet it is an Indenture.

(p) 8. E. 4. 8. 11. H. 7. 28. 35. H. 6. 34. 20. E. 4. 13. 17. E. 3. 12. H. 4. 17.

And it is holden that (p) if a feoffment in fee be made by Deed poll reſerving a Rent, this reſervation is good, for when the Feoffee accepts the Deed and Livery of the Land he agreeth to the rent, and the rent is reſerved by the words of the Feoffor, and not by the grant of the Feoffee: but of this more hereafter. In the mean time it is to be noted, that of antient time a Deed indented was called Charta cyrographata, or Charta communis, becauſe each party had a part. And a Deed poll was called Charta de una parte.

(q) Fleta l. 3. c. 14. Britton fo. 100.

(q) Chartæ autem de pura donatione de ſimplici penes donatorium & ejus hæredes debet remanere, communes vero duplicari debent, ita quod quilibet habet partem ſuam. Vel ſi una ſit tantum, tunc in æqua manu communis amici utriuſque ponatur ſalvo cuſtodiend' dum cuilibet partium neceſſe fuerit exhibendum.

(r) 12. E. 2. Feoffments & 18. E. 2. Aſſ. 381.

¶ *Reſervant a luy.* (r) More, it is a maxim in Law, that the Rent muſt be reſerved to him from whom the ſtate of the Land moveth, and not to a ſtranger.

(ſ) 35. H. 6. 36.

(ſ) But ſome do hold that otherwiſe it is in the caſe of the King.

Old tenures. Britton c. 66. 164. F. N. B. 210. Bract. 86.

¶ *Et tiel rent eſt rent charge.* It is called a rent charge, becauſe the Land for payment thereof is charged with a diſtreſs. If it be to the whole value of the Land, or to the fourth part of the value, then the rent is called a free farm.

¶ Mes ſi home per fait endent a cel iour, fait tiel done en fee taile, ſ' remainder ouſter en fee, ou leaſe a terme de vie, le remainder ouſter en fee, ou un feoffment en fee & per ſn lendenture il reſerve a luy, & a ſes heires un certaine rent, & que ſi le rent ſoit aderere, q̄ bien lirroit a luy & a ſes heires a diſtreiner, &c. tiel rent eſt rent charge, pur ceo que tiels terres ou tenements ſont charges oue tiel diſtreſs per force de le ſcripture tantſolement, & nemy d common dzoit. Et ſi tiel home ſur fait endent reſerva a luy, & a ſes heires certain rent ſans aſcun tiel clauſe miſe en le fait, que il poit diſtreine, donque tiel rent eſt rent ſecke, pur ceo que il ne poit bener de aver le rent, ſi ceo ſoit deny per meane de diſtreſs, & ſil ne fuit unques en ceſt cas ſeiſie de la rent, il eſt ſans remedie, come ſerra dit apres.

But if a man by Deed indented at this day, maketh ſuch a gift in fee tail, the remainder over in fee, or a Leaſe for life, the remainder over in fee, or a feoffment in fee, and by the ſame Indenture he reſerveth to him and to his Heirs a certain rent, and that if the rent be behind, that it ſhall be lawful for him and his Heirs to diſtrain, &c. ſuch a rent is a rent charge, becauſe ſuch Lands or Tenements are charged with ſuch diſtreſs by force of the writing only, and not of Common Right. And if ſuch a man upon a deed indented reſerve to him and to his heirs a certain rent without any ſuch clauſe put in the Deed, that he may diſtrain, then ſuch rent is rent ſeck, for that he cannot come to have the rent if it be denied, by way of diſtreſs. And if in this caſe he were never ſeiſed of the rent, he is without remedy, as ſhall be ſaid hereafter.

Here Littleton putteth his Caſe, and ſo did he in the

the next Section before, on a clauſe of diſtreſs generally granted. (t) A man granted a rent out of certain Land, pro conſilio impenſo & impendendo, To have and to hold to him and to his Aſſigns for term of his life, payable at four Feaſts in the year, and for default of payment upon demand, it ſhould be lawful for him to diſtrain; the Grantee granted the Rent over: the Aſſignee after one of the days demanded the Rent, and diſtrained, and the diſtreſs adjudged lawful, for he needs not make a demand at any of the days, as in the caſe of re-entry, but he may demand it when he will, for it is only to entitle him to his remedy for his meer duty. (t) 7. f. 28. b. Maüds caſe H. 43. El. in Com. Banco. Rot. 1108. inter Maund & Gregory. M. 40. & 41. El. in Com. Banco inter Stanly & Read. 18. El. Dyer 348.

¶ *Diſtreyne, &c.* Here by (&c.) is implied what things are diſtrainable, which elſwhere is expreſſed at large. Alſo where the diſtreſs is to be taken in the ſame Land, and in what other, which with many differences is ſet down in his proper place. Vide Sect. 221.

¶ *Il ſerra ſans remedie.* Note that upon a reſervation of a Rent upon a Feoffment in fee by deed indented, (w) the Feoffor ſhall not have a Writ of Annuity, becauſe the words of reſervation, as reddendo, ſolvendo, faciendo, tenendo, reſervando, &c. are the words of the Feoffor, and not of the Feoffee, albeit the Feoffee by attornance of the State, is bound thereby. (w) 33. E. 3. Annuity 52. 1. H. 4. 5. 26. Aſſ. Pl. 66. 21. E. 4.

And where Littleton putteth his caſe, when a reſervation is made upon an eſtate that paſſeth by livery, the ſame Law it is, if a man at this day do bargain and ſell his Land by deed indented and inrolled according to the Statute, a rent may be reſerved thereupon, for albeit an uſe had only paſſed by the Common Law, yet now by the Statute of 27. H. 8. c. 10. the uſe and poſſeſſion paſs together, and ſo it was adjudged. * And ſo it is of a grant of a reverſion or remainder, and any other conveyance of Lands or Tenements, whereby any eſtate doth paſs. * Mich. 29. & 40. El. in Com. Banc. inter Wicks & Tillard.

Sect. 218.

¶ Auxy ſi home ſeiſie de certain terre graunt per un fait polle, ou per indenture un annual rent iſſuant hors de meſme la terre a un auter en fee ou en fee taile, ou pur terme de vie, &c. ovesqz clauſe de diſtreſs, &c. donques ceo ē rēt charge ſi le grant ſoit ſans clauſe d̄ diſtreſs, donques il eſt Rent ſeck. Et nota, que Rent ſeke idem eſt quod redditus ſiccus, pur ceo que nul diſtreſs eſt incident a ē.

ALſo if a man ſeiſed of a certain Land, grant by a Deed poll, or by Indenture, a yearly rent to be iſſuing out of the ſame Land, to another in fee or in fee tail, or for term of life, &c. with a clauſe of diſtreſs, &c. then this is a Rent charge, and if the Grant be without clauſe of diſtreſs, then it is a Rent ſeck. And note that Rent Seck *idem eſt quod redditus ſiccus*: For that no diſtreſs is incident unto it.

¶ *Rent ſeck* idem eſt quod redditus ſiccus. So Littleton expounds it himſelf.

¶ *Eiſie de Terre* (x) Note that a rent cannot be granted out of a Pitchary; a Common, an Advowſon, or ſuch like incorporeal inheritances, but out of Lands or Tenements whereunto the Grantee may have recourſe to diſtrain, or which may be put in view to the recognitors of an Aſſiſe, as hath been ſaid before in this Chapter. And though it be out of Lands or Tenements, (z) yet it muſt be out of an eſtate that paſſeth by the conveyance, (as by all Littletons examples appeareth) and not out of a right: as if the Diſſeiſee releaſe to the Diſſeiſor of Land, reſerving a Rent, the reſervation is void, Et ſic de ſimilibus. (x) 32. E. 3. tit. ſci. fa. 102 40. E. 3. fol. Com. 139. Vide Sect. 213. (z) 10. E. 4. 3. b. 33. H. 6. 5. 50. E. 3. 9. 8. E. 4. 8. 5 E. 3 Fines 1. 9. E. 3. 7. 46. E. 3. 27. 21. H. 6. 8. Tempr. E. I. Aſſ. 42.

¶ *Grant per fait.* * Alſo a man may have a rent by preſcription. * 19. E. 3. Title 34.

This needs no explanation,

Sect.

Sect. 219.

¶ *RENT Charge.* Here it appeareth by Littleton, that this Prima facie is a rent charge, whereof in this Chapter shall be spoken more at large.

And so it is of a Rent Seck.

¶ *Home grant.* Put case that A. be seised of lands in fee, and he and B. grant a rent charge to one in fee, this Prima facie is the grant of A. & the confirmation of B. but yet the Grantee may have a writ of annuity against both (a) & two men grant an annuity of twenty pounds per annum, to another, although the persons be several, yet he shall have but one annuity: but if the grant be, Obligamus nos, & utrumque nostrum; the grantee may have a writ of annuity against either of them, but he shall have but one satisfaction.

(a) 16.E.2.tit.Annu.47 Vide Sect. 314.

¶ *Briefe de annuity,* is a writ for the recovery of an annuity. (b) An annuity is a yearly paiment of a certain sum of money, granted to another in fee for life or years, charging the person of the grantor only. (c) But not only the grantee, but his heir, and his and their grantee also shall have a writ of annuity. (d) But if a rent charge be granted to a man & his heirs, he shall not have writ of annuity against the heir of the grantor, albeit he hath Assets, unless the grant be for him and his heirs.

(b) Doct. & Stud. c. 3. 17.El.Dyer 344.b. 45.E.3.Executor 72.

(c) 3.E.6.Dyer 65. And Serjeant Bendloes reporteth that so was the opinion of the Court.

(d) 2.H.4.13. Dyer 17.El.344.b.

¶ Item si home granta per son fait un rent charge a un auter, et le rent est arere, le grantee poet eslier sil voet suer un briefe de Annuitie de ceo envers l'grantor ou distreyner pur le rent arrere, a l'distress retaine tanq; il soit de ces pay, mes il ne poit faire ne aver ambideux ensemble, &c. Car sil recover per briefe Dannuity, donques la terre est discharge de le distresse, &c. Et sil ne suist Briefe de Annuitie, mes distreine pur les arrerages, et le Tenant suist son Replegiare, & donques le grantee avowa le prisel de le distress en le Terre en Court de Record, donques est la terre charge, et la person del grantor discharge d Action d Annuity.

Also if a man grant by his Deed a Rent charge to another, and the Rent is behind, the Grantee may chuse whether he will sue a Writ of Annuity for this against the Grantor, or distrain for the Rent behinde, and the Distresse detain until he be paid, but he cannot do or have both together, &c. For if he recovers by a Writ of Annuity, then the Land is discharged of the distress, &c. And if he doth not sue a Writ of Annuity, but distrain for the arrearages, and the Tenant sueth his Replevin, and then the Grantee avow the taking of the distresse in the Land in a Court of Record, then is the Land charged, and the person of the Grantor discharged of the Action of Annuity.

¶ *Poet eslier.* The Grantee hath election to bring a writ of Annuity, and charging the person only to make it personal, or to distrain upon the Land, and to make it real.

But if a man grant a rent charge to a man and his heirs, and dieth, and his wife bring a Writ of Dower against the Heir, the heir in bar of her Dower, claims the same to be an annuity, and no rent charge, yet the wife shall recover her Dower, for he cannot determine his election by claim, but by suing of a Writ of Annuity, (as Littleton saith) neither can the heir have after the endowment an annuity for the two parts, for that should not be according to the deed of grant, for either the whole must be a rent charge, or the whole an annuity. But Littleton is to be understood with some limitation: (e) for of a Rent granted for owelty of partition, a writ of annuity doth not lie, because it is of the nature of the Land descended.

(e) 25.Ass.p.23.

ſcended. Alſo of ſuch a rent as may be granted without deed, a writ of Annuity doth not lie, though it be granted by Deed.

(f) And here is to be noted, That here is no election given of two ſeveral things, as if the grant were of an annuity, or a Robe yearly, &c. for there the Grantor had election at the day to deliver which he would. But here is two remedies given for one yearly ſumme, and conſequently the Grantee ſhall at any time have election to take which of the remedies he will, for in all caſes where ſeveral remedies be given, the party to whom the Law giveth the remedies, it giveth him withal election to take which of the remedies he will.

(f) Sir Rowland Heywards caſe, l. 2. f. 36. 28. E. 3. 98. 41. E. 3. 16. 2. 2. H. 4. 12. 6. H. 4. 10. 36. H. 6. 10. 9. E. 4. 46. 21. E. 4. 55. b. 1. E. 5. 1. F. N. B. 121.

¶ *Mes il ne poet faire un aver ambideux enſemble.* For then he ſhould recover one thing twice, which ſhould be a double charge to the Grantor.

Note, as to elections, theſe diverſities following.

Firſt, When nothing paſſeth to the feoffee or grantee before election to have the one thing or the other there the election ought to be made in the life of the parties, and the heir or executor cannot make election. But when an eſtate or intereſt paſſes immediately to the Feoffee, Donee, or Grantee, there election may be made by them, or by their Heirs or Executors. Lib. 2. f. 36. 37. in Sir Rowl. Heywards caſe.

Secondly, when one and the ſame thing paſſeth to the Donee or Grantee, and the Donee or Grantee hath election in what manner or degree he will take this, there the intereſt paſſeth immediately, and the party, his heirs, or executors, may make election when they will.

Thirdly, when election is given to ſeveral perſons, there the firſt election made by any of the perſons ſhall ſtand.

Fourthly, In caſe an election be given of two ſeveral things, always he which is the firſt agent, and which ought to do the firſt act, ſhall have the election: As if a man granteth a rent of twenty ſhillings, or a robe to one and to his heirs, the Grantor ſhall have the election, for he is the firſt agent, by payment of the one, or delivery of the other. So if a man maketh a leaſe, rendring a rent or a robe, the Leſſee ſhall have the election cauſa qua ſupra, and with this agree the Books in the * margent. (g) But if I give unto you one of my Horſes in my Stable, there you ſhall have the election, for you ſhall be the firſt agent by taking or ſeiſure of one of them. And if one grant to another twenty loads of Hazil, or twenty loads of Maple to be taken in his wood of D. there the Grantee ſhall have election, for he ought to do the firſt act, *i.* to ſell and take the ſame.

*9. E. 4. 36. b. 13. E. 4. 4. b. 1. 5. E. 4. 6. b. 11. E. 3. ann. 27. 11. Aſſ. p. 3. 29. aſſ. 55. 3. E. 3. tit. Aſſ. 175. 43. E. 3. tit. Barre 194.

(g) 2. H. 7. 23. 2.

Fifthly, When the thing granted is of things annual, and are to have continuance, there the election remaineth to the Grantee, (in caſe where the law giveth to him election) as well after the day as before, otherwiſe it is when the things are to be performed unica vice. And therefore if I grant to another for life, an Annuity or a Robe at the Feaſt of Eaſter, and both are behind, the Grantee ought to bring his writ of Annuity in the diſjunctive, for if he bring his writ of Annuity for the one only, and recover, this judgment ſhall determine his election for ever, for he ſhall never have a Writ of Annuity afterwards, but a Scire facias, upon the ſaid judgment, Which reaſon Fitzherbert in his Natura brevium not obſerving, held an opinion to the contrary. But if I contract with you to pay unto you twenty ſhillings or a Robe at the Feaſt of Eaſter, after the Feaſt you may bring an Action of Debt for the one or for the other. 9. E. 4. 36. 13. E. 4. 4. and the other aboveſaid Books.

Sixthly, The Feoffee by his act and wrong may loſe his election, and give the ſame to the Feoffor: As if one infeoffs another of two acres, To have and to hold the one for one, and the other in tail, and he before election maketh a feoffment of both, in this caſe the Feoffor ſhall enter into which of them he will, for the act and wrong of the feoffee.

¶ *Si recover en Briefe de Annuitie donques eſt la terre diſcharge de diſtreſſe.* Here is to be obſerved, That this determination of the election of the Grantee muſt be by action or ſuit in Court of Record (h) for albeit the Grantee diſtrain for the Rent, yet he may bring a Writ of Annuity and diſcharge the Land. And Littleton putteth his caſe here ſurely upon a Recovery in a Writ of Annuity. (i) But if the Grantee doth bring a Writ of Annuity, and at the return thereof appear and count, this is a determination of his election in Court of Record, albeit he never proceedeth any further. (k) As if a Wife be endowed ex aſſenſu patris, and the husband dieth, the wife hath election either to have her Dower at the Common Law, or ex aſſenſu patris, if ſhe bring a Writ of Dower at the Common Law, and count, albeit ſhe recover not, yet ſhall ſhe never after claim her Dower ex aſſenſu patris.

(h) 17. El. Eyer. 344. b. (i) F. N. B. 152 a. 5. H. 7. 33 b. (k) 12. E. 2. Dower 158.

(l) So if the Grantee bring an Aſſiſe for the rent and make his plaint, he ſhall never after bring a Writ of Annuity. But the purchaſing of a Writ of Annuity, and entry of it in Court of Record, or of an aſſiſe, is no determination of the election, becauſe an ſtranger may purchaſe a writ in the name of the Grantee, and enter it of record, but if the grantee appear thereunto, &c. then this doth amount to a determination of his election, as hath been ſaid. (l) 10. E. 4. 17.

¶ *Son replegiare.* Littleton ſpake immediately before of the briefe dannuicy, but here he ſaith, Son replegiare, becauſe goods may be repledied two manner of waies, viz. by writ, and that is by the Common Law, or by the pleint, and that is by the Statutes for the more ſpeedy having again of their cattel and goods. A Replegiare lieth, as Littleton here teacheth us, where goods are diſtrained and impounded, the owner of the goods may have a Writ De Replegiari facias, whereby the Sheriff is commanded, taking ſureties in that behalf, to deliver the goods diſtrained to the owner, or upon complaint made to the Sheriff he ought to make a replevy in the Country. Replegiare is compounded of Re, and plegiare, as much as to ſay, as to redeliver upon pledges or ſureties; and in the Statute of Marlebridge, Deliberare is uſed for Replegiare. (m) And the Sheriff ought to take two kind of pledges, one by the Common Law, and they be plegii de proſequendo, and another by the ſtatute, viz. Plegii de retorno habendo. Vide Sect. 58. what things may la wfully be diſtrained, whereupon a Replegiare may be ſued. The forms of the writ you ſhall read in the Regiſter and F. N. B.

Glanvil l.12.c.12. Marlebr.c.21. W 1.c.16,17. W.2. c.39. Fleta l.2.c.40.

Marlebr.c.21. 21.H.6. Return de Vic. 17. (m) W.2,c.2. Fleta l.4.c.5. 4.H.6.15.

* Regiſt. F.N.B.68.

(n) It is a general rule that the Plaintiff muſt have the property of the goods in him at the time of the taking. (o) But yet if the goods of a Villain be diſtrained, the Lord of the Villain ſhall have a Replevy, becauſe the bringing of the Replevy amounts to a claim in Law and veſts the property in the Plaintiff. But in that caſe if the goods of the Villain be taken by a treſpaſs, the Lord ſhall have no replevy, becauſe the Villain had but a right.

(n) 3.E.3.74.6.H.4.2.& 39.9.H.6.39.20.H.6.19 (o) 33.E.3.Replev.43. 42.E.3.18. 9.H.6.25. F.N.B.69. F.6.H.7.9. 19.E.3.Repl.32.

(p) But there is two kind of properties, a general property, which every abſolute owner hath, and a ſpecial property as goods pledged or taken to manure his Lands or the like, and of both theſe a Replegiare doth lie.

(p) 42.E.3.18. 11.H.4.17.23.47.E.3.12 48.E.3.20. 7.H.4.17.

And albeit it be prohibited by the Statute of Marlebridge, c. 22. quod vicecomes poſt querimoniam inde ſibi factam ea fine impedimento vel contradictione ejus qui dicta averia ceperit deliberare poſſit, &c. (q) Yet where the Defendant claims property, the Sheriff cannot proceed, for it is a rule in Law, that property ought to be tried by Writ. And therefore in that caſe where the tryal is by pleint, the Plaintiff may have a Writ De proprietate probanda directed to the Sheriff to try the property, and if thereupon it be found for the Plaintiff, then the Sheriff to make deliverance, (for ſo be the words of the Writ) and if for the Defendant, he can no further proceed, but that is but an inqueſt of Office, and therefore if thereby it be found againſt the Plaintiff, yet he may have a Writ of replevy to the Sheriff, and if he return the claim of property, &c. yet ſhall it proceed in the Court of Common Pleas where the property ſhall be put in iſſue and finally tried. And the Sheriff may take a pleint upon the ſaid act out of the County, and make replevin preſently, for it ſhould be inconvenient for the owner to forbear his Cattel till the County day.

Marlbr.c.22.

(q) 30.E.3.22.31.E.3. Replev.35. & 4. 7.H.4.26.28. 31.H.6. Prop.Prob.5. 1.E.4.5. 21.E.4.64.2.Eliz.Dyer. 173. 21.E.4.66.

(r) It is to be noted that a man cannot claim property by his Bailiff or ſervant, and the reaſon is for that if the claim fall out to be falſe he ſhall be fined for his contempt, which the Lord cannot be unleſs he maketh claim himſelf, for Nemo punitur pro alieno delicto.

(r) 5.E.3.38. 11.H.4.4. 27.E.2.Prop.Prob.6.

In a ſpecial caſe a man may have a replevin of goods not diſtrained, as if the Meine put in his cattel in lieu of the cattel of the tenant paravail, that he is bound to acquit, he ſhall have a replevin of thoſe cattel that never were diſtrained.

34.H.6.47.

If a man by his Deed grant a Rent with clauſe of diſtreſs, and grant further, that he ſhall keep the goods diſtrained againſt gages and pledges, until the Rent be paid, yet ſhall the Sheriff replevy the goods diſtrained, for it is againſt the nature of ſuch a diſtreſs to be irreplevisable, and by ſuch an intention the current of replevins ſhould be overthrown to the hinderance of the Common-wealth; and therefore it was diſallowed by the whole Court, and awarded that the Defendant ſhould gage deliverance, or elſe go to priſon. And Bracton is of the ſame opinion, for he ſaith, Eodem modo de via obſtructa, per breve quod juſticiet propter communem utilitatem, ne tranſeuntes ire diu impediantur, quia hoc eſſet commune damnum, & in hoc vicecomes & Juſticiarii faciant ſicut ſuper detentionem averiorum contra vadium plegii, propter communem utilitatem, ne animalia diu incluſa pereant, which in my opinion is an excellent point of learning.

31.E.3.Gage deliver. 5. Bracton l.4.fo.238. a. & b.

If the beaſts of divers ſeveral men be taken, they cannot joyn in a Replegiare. But every one muſt have a ſeveral replevin: And ſo in a replevin it is a good plea to ſay that the property is to the Plaintiff and to a ſtranger, and where there be two Plaintiffs, that the property is to one of them.

28.E.3.92. 3.H.4.12. 34.H.6.37. 2.E.4.23.

There is alſo a Writ De homine replegiando. But Littleton is ready to give you further inſtruction, therefore hear him.

Regiſt.fo.133. Bract.fo.121. & 154. W.1.c.11.Fleta l.2. c.2. F.N.B.66.b.

¶ *Et avowa le priſe, &c. en court de record.* Here it appeareth that an avowry in Court of Record which is in nature of an action, is a determination of his election before any judgment given. And this is a good proof of that which hath been formerly ſaid of the Writs of Annuity and Aſſiſe.

Electio

Electio ſemel facta & placitum teſtatum non patitur regreſſum. 21.H.6.24. per Newton
Quod ſemel placuit in electionibus amplius diſplicere non poteſt. 27.H.6.4.

If a Rent charge be granted to A. and B. and their heirs, A. diſtraineth the Beaſts of the Grantor, and he ſueth a Replevin, A. avoweth for himſelf, and maketh conuſance for B; A. dyeth and B. ſurviveth, B. ſhall not have a Writ of Annuity, for in that caſe the election and avowry for the Rent of A. barreth B. of any Election to make it an Annuity, albeit he aſſented not to the avowry.

But here is another diverſity to be obſerved between the caſe aforeſaid of the grant of the Rent where he (as hath been ſaid) may make it either real or perſonal, and when a man may have election to have ſeveral remedies for a thing that is meerly perſonal or meerly real from the beginning. As if a man may have an action of account or an action of debt at his pleaſure, and he bringeth an action of account and appeareth it, and after is Nonſuit, yet may he have an action of debt afterwards, becauſe both actions charge the perſon. The like law is of an Aſſiſe and of a Writ of entry in the nature of an Aſſiſe, and the like. 28.E.3.95.b. 27.E.3.89. b.

Sect. 220.

¶ **Item, ſi home voile q̄ un auter aberoit un Rent charge iſſuant hors de ſa terre, mes il ne voile q̄ ſa perſon ſoit charge en aſcun maner p̄ briefe dannuitie, donques il poit aver tiel clauſe en la fine de ſon fait.** Proviſo ſemper, quod præſens ſcriptum, nec aliquid in eo ſpecificatum, non aliqualiter ſe extendat ad onerandum perſonam meam, per breve, vel actionem de annuitate, ſed tantummodo ad onerandum terras, & tenementa mea de annuali redditu prædict', &c. **Donques la terre eſt charge, & le perſon del grantor diſcharge.**

ALſo if a man would that another ſhould have a Rent charge iſſuing out of his Land, but would not that his perſon be charged in any manner by a Writ of Annuity, Then he may have ſuch a clauſe in the end of his Deed: provided alwaysthat this preſent writing nor any thing therein ſpecified ſhall any wayextend to charge my perſon by a writ or an action of Annuity, but only to charge my lands and tenements with the yearly rent aforeſaid, &c. Then the land is charged, and the perſon of the grantor diſcharged.

¶ By this Section it appeareth, that when in a general grant, the Law doth give two remedies, that the Grantor may provide that the grantee ſhall not uſe one of them and leave the party to the other. But where the Grantee hath but one remedy, there that remedy cannot be barred by any Proviſo; for ſuch a Proviſo ſhould be repugnant to the Grant. 28.H.8. Dier 9.3.

¶ *De annuali reddit', &c.* Here by (&c.) and the conſequent of this Section be implyed divers excellent points of learning, viz. If a man by his Deed granteth a Rent Charge out of the Mannor of Dale (wherein the Grantor hath nothing) with ſuch a Proviſo that it ſhall not charge his perſon, albeit the repugnancy doth not appear in the Deed, yet the Proviſo taketh away the whole effect of the Grant, and therefore is in judgment of Law repugnant, for upon the matter it is but a grant of an Annuity, provided that it ſhall not charge his perſon, for which cauſe our Author putteth his caſe of a Rent Charge, iſſuing truly out of Land. But if a man by his Deed grant a Rent charge out of Land, provided that it ſhall not charge the Land, albeit the Grantee hath a double remedy (as hath been ſaid) yet the Proviſo is repugnant, becauſe the Land is expreſly charged with the Rent, but the Writ of Annuity is but implyed in the Grant, and therefore that may be reſtrained without any repugnancy, and inſufficient Remedy left for the Grantee, for which cauſe our Author putteth his caſe of the reſtraint of bringing a Writ of Annuity. And yet in ſome caſe where there is a Proviſo So it was reſolved by the Juſtices in 11. H. 8. as Juſtice Spilman reporteth. 9.H.6.53.

6. Eliz. Dyer 227.

in the Deed that the grantee ſhall not in any ſort charge the perſon of the Grantor generally, notwithſtanding the perſon of the grantor ſhall be charged: As if a man grant a rent charge out of certain Lands to another for life with ſuch a Proviſo, the Rent is behind, the Grantee dieth, the Executors of the Grantee ſhall have an Action of Debt againſt the Grantor, and charge his perſon for the arrearages in the life of the Grantee, becauſe the executors have no other remedy againſt the grantor for the arrearages; for diſtrain they cannot, becauſe the Eſtate in the rent is determined, and the Proviſo cannot leave the Executors without remedy, as appeareth by that which hath been ſaid. And therefore our Author putteth his caſe of a Rent charge continuing. And here is to be obſerved that this word (Proviſo) hath diverſ operations, ſometimes it worketh a qualification or limitation, and ſo it is taken here, and often in our Books: Sometime a Condition, and ſometime a Covenant, whereof you ſhall read more hereafter, Sect. 320.

32. Aſſ. p. 1. Vide Sect. 384.

¶ *En le fine de ſon fait.* Here Littleton putteth his caſe of one Deed, but though the grant be general, and want ſuch a Proviſo, yet may the Grantee by another Deed by way of Defeaſance grant that he ſhall not charge the perſon of the Grantor, and that if he bring a writ of Annuity, that the Rent ſhall ceaſe.

¶ *Nec aliquid in eo ſpecificatum non aliqualiter ſe extendat, &c.* Here is to be obſerved a double negative, Nec, and Non, which in Grammatical conſtruction amounteth to an affirmative, for Negatio deſtruit negationem, & ambo faciunt affirmativum, yet the Law that principally reſpecteth ſubſtance, doth judg the Proviſo to be a negative according to the intent of the parties, and not according to Grammatical conſtruction, to the end the Proviſo may take effect, and the like you ſhall find hereafter in Littleton, * Mala Grammatica non vitiat cartam. Here our Author putteth his caſe of one Grantor, put then the caſe, that A. and B. being joyntenants of Lands in fee by their Deed grant a rent charge out of thoſe Lands, provided that the Grantee ſhall not charge the perſon of A. In this caſe if the Grantee bringeth a Writ of Annuity, he muſt charge the perſon of B only.

* Lib. 3. cap. de condic. Sect. 362.

Sect. 221.

¶ Que ſi A. de B. Here wanteth words to pterede theſe, viz. Qui il grant al A. de B. &c que ñ A. de B. &c. as it appeareth in the original, and ſo it appeareth in the cloſe of this Section, viz. Mes granta tantſolement que il poet diſtreyner. And without ſuch a grant the clauſe ſhould be imperfect.

¶ *Pur ceo que le manor eſt charge oue le rent per voy de diſtreſs.* And yet no Rent is expreſly granted out of the Mannor. But by the grant that he ſhall diſtrain for ſuch a yearly ſumme of mony in judgment of Law the Mannor is charged with the Rent, but the perſon of the Grantor cannot be charged, becauſe he expreſly granteth no Rent, for that would charge his perſon, but that the Grantee ſhould diſtrein, &c. which only chargeth the Land.

¶ Item, ſi home fait tiel fait en tiel maner, q̃ ſi A. de B. ne ſoit annuelmẽt pay al feaſt de Noel pur termé de ſa vie xx.s. de loyal mony, que adonques bien lirroit a ñ ceſtuy A. de B. a diſtreiner pur ceo en le manor de F. &c. ceo eſt bone rent charge, pur ceo q̃ le manor eſt charge oue le rent per voy de diſtreſs, & uncore la perſon d̃ celuy que fait tiel fait, eſt diſcharge en tiel caſe de action dannuitie, p̃ ceo que il ne granta per ſon fait aſcun

ALſo if one make a Deed in this manner, that if A. of B. be not yearly payed at the Feaſt of Chriſtmaſs for term of his life xx s. of lawful mony, that then it ſhall be lawful for the ſaid A. of B. to diſtrain for this in the Mannor of F. &c. this is a good Rent Charge, becauſe the Mannor is charged with the Rent by way of diſtreſs, and yet the perſon of him which makes ſuch Deed is diſcharged in this caſe of an Action of Annuity, becauſe he doth

Annuitie

Annuitie a l'dit A. ǒ B. mes grants tantſolement, q̄ il poit diſtrainer ꝑ tiel Annuitie, &c.

not grant by his Deed any Annuity to the ſaid A. of B, but granteth only that he may diſtrain for ſuch Annuity, &c.

¶ *Que il poit diſtreine pur tiel Annuity, &c.*

Here by (&c.) many points worthy of obſervation are implyed, viz. if a man ſeiſed of Lands in fee bindeth his Goods and Lands to the payment of a yearly rent to A. de B. this is a good rent charge with power to diſtrain, albeit there be no expreſs words of charge, nor to diſtrain. Or in theſe words, Obligo manerium meum de C. & omnia bona in dicto Manerio exiſtent' A. de B. in annuo redditu de xxs. ad diſtringend' per Balivum Domini Regis pro reddit' prædicto. Upon this grant a rent charge iſſueth out of the Mannor, and where the words be, ad diſtringendum per Balivum Domini Regis, this is for the advantage of the Grantee. And therefore the Kings Bailp ſhould be but his Miniſter to diſtrain for his Rent, and that which he may do by his ſervant, he may do by himſelf, or by any other of his Servants.

18. Aſſ. p. 1. 18. E. 3. 32. 3. Aſſ. 7. 3. E. 3. 12. 10. Aſſ. 24. 31. Aſſ. p. 17. 33. Aſſ. Annuity 52. 16. E. 3. grant 64.

If a man by Deed grant a rent of forty ſhillings to another out of his Mannor of Dale, to have and to perceive to him and his heirs, and grant over by the ſame deed, that if the rent be behind, that the grantee ſhall diſtrain in the Mannor of Sale (be the Mannor of Sale in the ſame County or in another County, and be this grant by one Deed or divers Deeds) the Rent is only iſſuing out of the Mannor of D. and it is but a pain, that he ſhall diſtrain in the Mannor of S. but both the Mannors are charged, the one with the rent, and the other with diſtreſs for the rent, the one iſſuing out of the Land, and the other to be taken upon the Land. And whereas our Author puts his caſe of a grant for life: So it is if I grant to you, that you and your Heirs, or the Heirs of your body ſhall diſtrain for a Rent of forty ſhillings within my Mannor of S. this by conſtruction in Law ſhall amount to a grant of a Rent out of my Mannor of S. in Fee ſimple, or Fee tail, for if this ſhall not amount to a grant of a Rent, the grant ſhall be of little force or effect, if the Grantee ſhall have but a bare diſtreſs, and no rent in him. For then he ſhall never have an Aſſiſe of this, &c. And this is the reaſon, that it is ſo often ruled and reſolved, (*) that this amount to a grant of a rent per conſtruction of Law, ut res magis valeat, and all this is neceſſarily implied in the (&c.) and in this caſe the Grantee ſhall not have a writ of Annuity as our Author ſaith. And whereas our Author putteth his caſe where the diſtreſs is to be taken in the ſame Land, out of which the Rent by conſtruction of Law is iſſuing, hereby is implied that if a rent be granted, out of the Mannor of D. and the grantor grant over, that if the rent be behind, the grantee ſhall diſtrain for the ſame rent in the Mannor of S. this is but a penalty in the Mannor of S. for three cauſes.

Lib. 7. f. 23. 24. 13 But his caſe.

(*) 3. E. 3. 12. 3. Aſſ. p. 7. 14. Aſſ. p. 14. 16. E. 3. tit. grants 61. 18. E. 3. 32. 26. Aſſ. 38. 30. Aſſ. 12. 46. E. 3. 18. 32. 8. H 4. 19. 9. H. 6. 9. 22. H. 6. 11.

Firſt, The Law needs not to make conſtruction that this ſhall amount to a grant of a rent, for here a Rent is expreſly granted to be iſſuing out of the Mannor of D. and the parties have expreſly limited out of what Land the Rent ſhall iſſue, and upon what Land the diſtreſs ſhall be taken, and the Law will not make an expoſition againſt the expreſs words and intention of the parties when this way ſtands with the rule of the Law. Quoties in verbis nulla eſt ambiguitas, ibi nulla expoſitio contra verba expreſſa fienda eſt.

Secondly, If in this caſe this ſhall amount to a grant of a rent out of the Mannor of S. then the Grantor ſhall be twice charged. For if the Grantee bringeth a writ of Annuity, this ſhall extend only to the Mannor of D. For upon the grant of a diſtreſs in the Mannor of S. no writ of Annuity lieth, becauſe the Mannor of S. is only charged, and not the perſon of the Grantor as to this; and for this cauſe the bringing of the writ of Annuity cannot diſcharge the Mannor of S. of any Rent: and ſo the Law by conſtruction againſt the words and the intention of the parties ſhall do injury to the Grantor to charge him twice.

Thirdly, if in ſuch caſe the Mannor of S. in which the diſtreſs is only limited, ſhall be in another County, then it hath been often adjudged, that the Rent ſhall not iſſue out of the ſame, but the diſtreſs ſhall be as a mean and remedy to compel the Tenant of the Land to pay the Rent. And it was ſaid, that there was no diverſity in reaſon, that the Law in conſtruction ſhall make the rent to be iſſuing out of this, when it lieth in the ſame County, and not when it lieth in ſeveral Counties, for the words in both caſes are all one, and there is no reaſon to ſay that he ſhall fail of a recovery by Aſſiſe. And the Books in 1. Aſſ. p. 10. and 1. E. 3. 21. and other Books do not ſay that the rent iſſueth in this caſe out of both, but that the Land in which the diſtreſs ſhall be taken is charged, and this is true, for it is charged with the diſtreſs. And inaſmuch as it was charged with the diſtreſs, their opinion was that the Tenants of both of them ſhall be named in the Aſſiſe. And the opinion of Finchden in 41. E. 3. 13. was affirmed to be good Law, That if the Mannor of D. out of which the rent is granted be recovered by an elder Title, that all the rent is extinct, but if the Mannor of S. in which the diſtreſs is limited be evicted, yet all the rent remains. * So if the Grantee purchaſe parcel of the Mannor of S. the Rent is not extinct, for that the Rent iſſueth only out of the Man-

Vide Bulwars caſe. Lib 7. fo. 3. 1. Aſſ. p. 10. 1. E. 3. 21. Vid. 9. E. 3. 13. 31. Aſſ. 27 17. E. 4. 6. 10. Aſſ. 4. 10. E. 3. 18. 2. E. 2. Aſſ. 360 1 Aſſ. 10. 3. Aſſ. 7. Fa. 8 6 27. 22 Aſſ. 66. 31. Aſſ. 27. 29. E. 3. Aſſiſe 366. 41. E. 3. 13. per Finchden * Vide 17. E. 4 6. ſemblable caſe. Vide Sect. prox. ſequen.

no; of D. And it is ſaid that if a man grant a rent out of three acres, and grant over, that if the Rent be behind, that he ſhall diſtrain for the rent in one of the Acres, this rent is entire, and cannot be a rent ſeck out of two Acres, and a rent charge out of the third Acre, and therefore it is a Rent ſeck for the whole, and yet he ſhall diſtrain for this in the third Acre. So if a Rent be granted to two and to their heirs, out of an Acre of Land, and that it ſhall be lawful for one of them and his Heirs to diſtrain for this in the ſame Acre, this is a Rent ſeck, for inſomuch as they ſtand jointly ſeiſed of one entire rent; it cannot be as to the one a Rent ſeck, and as to the other a Rent charge, and this diſtreſs is an appurtenant to the Rent: and therefore if he which hath the Rent dieth, the ſurvivor ſhall diſtrain, and if both grant over the rent to another, he ſhall diſtrain for this. But if a man grant a Rent out of Black Acre to one and to his heirs, and grant to him that he may diſtrain for this in the ſame Acre for term of his life, this is a rent charge for his life, and a Rent ſeck after, diverſis temporibus. Otherwiſe it is if the diſtreſs be limited for certain years in the ſame Land, there this remains a Rent ſeck intirely, for that the fee and the freehold is ſeck in ſuch caſe.

If a man ſeiſed of Lands in fee, and poſſeſſed of a term for many years, grant a Rent out of both for life, in tail or in fee, with clauſe of diſtreſs out of both, this Rent being a freehold doth iſſue only out of the freehold, and the Lands in leaſe are only charged with a diſtreſs. But if he had granted the Rent only out of the Lands in leaſe for term of the life of the Grantee, this had iſſued out of the term, and the Land had been charged during the term if the Grantee lived ſo long.

22.H.6.10.b. If a man be ſeiſed of twenty Acres of Land, and grant a Rent of twenty ſhillings percipiend' de qualibet acra terræ meæ, (that is) out of every one acre of my Land, this is a ſeveral grant out of every ſeveral Acre, and the Grantee ſhall have twenty pounds in all.

A. doth bargain and ſell Land to B. by Indenture, and before inrolment they both grant a Rent charge by Deed to C. and after the Indenture is inrolled ſome have ſaid, that this rent charge is avoided, for ſay they, it was the grant of A. and by the inrolment it hath relation to the delivery (which ſay they) ſhall avoid the grant, notwithſtanding the confirmation of the other which had nothing in the lands at that time. But the grant is good, and after the inrolment by the operation of the Statute, it ſhall be the grant of B. and the confirmation of A. But if the Deed had not been inrolled, it had been the grant of A. and the confirmation of B. and ſo quacunque via data, the grant is good.

Sect. 222.

¶ *Extinct*, Cometh of the Verb Extinguere, to deſtroy or put out, and a Rent is ſaid to be extinguiſhed when it is deſtroyed and put out.

¶ *Apportion.* This cometh of the word Portio, quaſi partio, which ſignifieth a part of the whole, and Apportion ſignifieth a Diviſion or partition of a Rent, common, &c. or a making of it into parts.

(a) Doct. & Stud. l. 2. c. 16. 21. H. 7. 2. 21. E. 3. 58.

(a) The reaſon of this extinguiſhment is becauſe the Rent is intire, and againſt common right, & iſſuing out of every part of the land, and therefore by purchaſe of part it is extinct in the whole, and

(b) 30. Aſſ. 12. 5. Aſſ. 22.

cannot be (b) apportioned, but by act in Law it may, as hereafter ſhall be ſaid. (c) If

(c) 46. E. 3. 32. 14. Aſſ. 8. 14. 26. Aſſ. 38.

the Grantee of a rent charge purchaſe parcel of the Land, and the Grantor by his deed

¶ Item, ſi home ad un rēt charge a luy & a ſes heires iſſuant hors de certein terr, ſil purchaſe aſcun parcel de cel a luy, & a ſes heires, tout le rent charge eſt extinct, & lannuitie auxy, pur ceo que rent charge ne poit per tiel maner eſtre apportion. Mes ſi home que aver rent ſervice, purchaſe parcel de la terre dont le rent eſt iſſuant, ceo nextiendra tout, mes pur le parcel, car rent ſervice en tiel cas

ALſo if a man hath a Rent charge to him and to his Heirs iſſuing out of certain Land, if he purchaſe any parcel of this to him and to his Heirs, all the Rent charge is extinct, and the Annuity alſo, becauſe the Rent Charge cannot by ſuch manner be apportioned. But if a man which hath a Rent Service purchaſe parcel of the Land out of which the Rent is iſſuing, this ſhall not extinguiſh all, but for the parcel. For

poit

poit eſtre appoztion ſolonque le halue de la terre. Mes ſi un tient la terre de ſon Seignioz per le ſervice de render a ſon Seignioz aſſuelmẽt a tiel feaſt un chival, ou un eſperon doz, ou un Clove, Gylofer, & huiſmodi, ſi en tiel caſe Seignioz purchaſe parcel de la terre, tiel ſervice eſt ale, pur ceo que tiel ſervice ne poit eſtre ſever, ne appoztion.

a Rent Service in ſuch caſe may be apportioned according to the value of the Land. But if one holdeth his land of his Lord by the ſervice to render to his Lord yearly at ſuch a feaſt a horſe, a golden Spear, or a Clove, Gilliflower, and ſuch like, if in this caſe the Lord purchaſe parcel of the Land, ſuch ſervice is taken away, becauſe ſuch ſervice cannot be ſevered nor apportioned.

that which is his own, viz. the Rent, and dealeth not with the Land as in caſe of purchaſe of part. And ſo was it holden in the Common place, Hil. 14. Eliz. which I my ſelf heard and obſerved. So (c) if the Grantee of an Annuity or Rent charge of 20 pound grant 10 pound parcel of the ſame Annuity or Rent charge, and the Tenant attorn, hereby the Annuity or Rent charge is divided.

Hill. 14. Eliz.
(c) 9. H. 6. 12. 53. F. N. B. 152. D. E.

And (i) when the rent charge is extinguiſhed by his purchaſe of part of the Land, he ſhall never have a writ of Annuity, becauſe it was by the grant a rent charge, and he hath diſcharged the land of the rent charge by his own act by purchaſe of part. And therefore he cannot by writ of Annuity diſcharge the Land of the diſtreſs, as Littleton hath before ſaid. But if the rent charge be determined by the act of God or of the Law, yet the Grantee may have a writ of Annuity. As if tenant for another mans life by his Deed grant a Rent charge to one for 21 years, Ceſty que vie dieth, the rent charge is determined, and yet the Grantee may have during the years a Writ of Annuity for the arrearages incurred after the death of Ceſty que vie, becauſe the rent charge did determine by the act of God and by the courſe of Law, Actus legis nulli facit injuriam. The like Law is if the Land out of which the Rent charge is granted be recovered by an elder title, and thereby the Rent charge is voided, yet the Grantee ſhall have a writ of Annuity, for that the Rent charge is avoided by the courſe of Law, and ſo it was holden in Wards Caſe above remembred againſt an opinion obiter in 9. H. 6. 42. 2.

( ) 14. E. 4. 4.
22. E. 4. Le darrein caſ. 51
7. H. 6. 9. H. 6. 1. 5. H. 7. 33

Wards caſe cited in l. 2. In Heywards caſe. f. 36.

9. H. 6. 42. 2.

¶ *Car rent ſervice in tiel caſe poet eſte apportion.* Whether this apportion was at the Common Law, or by the force of the Statute of Quia emptores terrarum, hath been a queſtion in our Books. * And it appeareth by Littleton that it was ſo at the Common Law, for when he citeth any thing prohibited by any Statute, he citeth the Statute, as he hath done this very Act before. 2. Littleton ſpeaketh here indefinitely of Rent ſervice, and there be divers kinds of Rent ſervices which are not within that Statute, and yet ſuch Rent ſervices are apportionable by the common Law, as if a man maketh a Leaſe for life or years reſerving a Rent, and the Leſſee ſurrender part to the Leſſor, the Rent ſhall be apportioned. So if the Leſſor recovereth part of the land in an action of waſte, or entreth for a forfeiture in part, the Rent ſhall be apportioned.

* Brooks tit. apportionment 28. 18. E. 3. 49. 22. Aſſ. 52. 3. Aſſ. 18. 18. E. 2. Avowry. 218. Vide l. 6. fo. 1. 2. in Bruertons caſe. Vide l. 8. fo. 105. 106. in Talbots caſe.

(g) So likewiſe if the Leſſor granteth part of the reverſion to a ſtranger, the Rent ſhall be apportioned, for the rent is incident to the reverſion. (h) So it is if Tenant by Knights ſervice by his laſt will and teſtament in writing deviſeth the reverſion of two parts of the Lands, the deviſee ſhall have two parts of the rent.

(g) 14. H. 8. 12. Vide l. 8. fo. 79. in Wildes caſe.
(h) Trin. 43. El. Rot. 243 inter Weſt & Laſſels. & Hil. 42. El. Rot. 108. in Communi banco inter Ewer and Myle.

And theſe caſes are in my opinion rightly adjudged againſt a ſudden opinion in Hill. 6. & 7. E. 6. reported by Serjeant Bendloe to the contrary. More what inconvenience ſhould follow if by the ſeverance of the reverſion the Rent ſhould be extinct.

¶ *Purchaſe parcell de la terre.* This is intended of a fee ſimple, for

for if there be a Lord and Tenant of 40 acres of Land by fealty and 10 shillings Rent, (i) the Tenant maketh a gift in tail, or Lease for life or years, of parcel thereof to the Lord, in this case the rent shall not be apportioned for any part, but the rent shall be suspended for the whole: for a Rent service (saith Littleton) may be extinct for part, and apportioned for the rest, but a rent service cannot be suspended in part by the act of the party, and in Esse for other part. So it is if the Lessor enter upon the Lessee for life or years into part, and thereof disseise or put out the Lessee, the rent is suspended in the whole, and shall not be apportioned for any part. And where our Books * speak of an apportionment in case where the Lessor enters upon the Lessee in part, they are to be understood where the Lessor enters lawfully, as upon a surrender, forfeiture, or such like, where the rent is lawfully extinct in part. And yet by act in Law a rent service may be suspended in part, and in esse for part. * As when the Guardian in Chivalry entreth into the Land of his Ward within age, now is the Seigniory suspended: but if the wife of the tenant be endowed of a third part of the Tenancy, now shall she pay to the Lord the third part of the rent. * And so it is if the tenant give a part of the tenancy to the father of the Lord in tail, the father dieth, and this descends to the Lord, in this case by act in Law the Seigniory is suspended in part and in esse for part, and the same Law is of a Rent charge.

(i) 32.H.8.tit.Extinguishment, Br.48. 11.E. 3.Cessavit.21.17.E.57.a

* 21.E.3.29. 9.E.4.1. 7.H.6.26. 4.H.7.6.b. 11.E.3.Cessavit.21.

* 33.E.3.Dower 138.

* 30.Ass. p.12.

*27.E.2.88.

Likewise a Seigniory may be suspended in part by the act of a stranger: * As if two joyntenants or Coparceners be of a Seigniory, and one of them disseise the tenant of the Land, the other Joyntenant or Coparcener shall distrain for his or her moiety.

Concerning the apportionment of Rents, there is a difference between a grant of a Rent, and a reservation of a Rent: for (k) if a man be seised of two acres of Land, of one in fee simple, and of another in tail, and by his Deed grant a rent out of both in fee, in tail, for life, &c. and dieth the land intailed is discharged, and the land in fee simple remains charged with the whole rent, for against his own grant he shall not take advantage of the weakness of his own estate in part. (l) But if he make a gift in tail, a lease for life or for years of both acres, reserving a rent, the Donor or Lessor dieth, the issue in tail avoideth the gift or lease, the rent shall be apportioned, for seeing the rent is reserved out of and for the whole land, it is reason that when part is evicted by an elder title, that the Donee or Lessee should not be charged with the whole rent, but that it should be apportioned ratably according to the value of the land, as Littleton here saith.

(k) 12 H.4.17.17.Ed.2. Dower 164.30.Ass.p.12

(l) 20.H.6.3. 9.E.4.1.a 35.H.8.Dyer 56. 7.E.6. Dier 82.9.E.3.6.H.4.17

(m) If a man grant a rent charge out of two acres, and after the Grantee recovereth one of the acres against the Grantor by a title paramount, the whole rent shall issue out of the other acre: but if the recovery be by a faint title by Covin, then the rent is extinct for the whole, because he claimeth under the Grantor.

(m) Doct. & Stud. l. 2. c.17.

If a man infeoffeth B. of one acre in fee upon condition, and B. being seised of another acre in fee, granteth a rent out of both acres to the feoffor, who entreth into the one acre for the condition broken, the whole rent shall issue out of the other acre, because his title is paramount the grant. But if a man maketh a lease for life of black acre and white acre, reserving two shillings rent, upon condition that if the Lessee doth such an act, &c. that then he shall have fee in black acre, the Lessee performs the condition, albeit now by relation he hath the fee simple ab initio, yet shall the rent be apportioned, for that the reversion of one acre whereunto the rent was incident, is gone from the Lessor, and so note a diversity between a rent in gross, and a rent incident to a reversion, concerning the apportionment thereof. And yet in some cases a rent charge shall not be wholly extinct, where the Grantee claimeth from and under the Grantor. As if B. maketh a lease of one acre for life to A. and A. is seised of another acre in fee, A. granteth a rent charge to B. out of both acres, and doth wast in the acre which he holdeth for life, B. reenterth in wast, the whole rent is not extinct, but shall be apportioned, and yet B. claimeth the one acre under A. And so it is if A. had made a feoffment in fee, and B. had entred for the forfeiture, the rent is to be apportioned, and is not wholly extinct: and the reason hereof is, for that it is a maxim in law, That no man shall take advantage of his own wrong, Nullus commodum capere potest de injuria sua propria: And therefore seeing the wast and forfeiture were committed by the act and wrong of the Lessee, he shall not take advantage thereof to extinguish the whole rent: and the whole rent cannot issue only out of the other acre, because the Lessor hath the one acre under the estate of the Lessee, and therefore it shall be apportioned. * If the King give two acres of land of equal value to another in fee, fee tail, for life or years reserving a rent of two shillings, and the one acre is evicted by a title paramount, the Rent shall be apportioned.

* Dyer Mich.7 8. Eliz. Manuscript. The Earl of Huntingdons case. Vide F. N. B. 234. b. Briefe de Onerando pro rata porc.

¶ *Mes si un home tient sa terre, &c. per service de render annuelment, &c. un Chival ou un Esperon dor, &c. si en tiel case le Seignior purchase parcel del terre, tiel service est ale.*

¶ *Chival*

¶ *Chival.* Nota, In Latin Deſtrarius is a great horſe, or horſe of ſervice, of the french word Deſtrier. Palfridus a horſe to travel on, of the French word Palfray. And Runcinus a Nag (you ſhall often read of them in Record) it cometh of the Italian word Roncino. But admit that parcel of the Land holden by ſuch entire ſerbice come to the Lord by deſcent, whether ſhall the entire ſervice wholly remain, or be extinct? and it is holden that in ſome caſe it ſhall be extinct for the whole, as Suit ſerbice, and ſuch other entire annual Suit ſervices. But if the ſerbice be, to render yearly at ſuch a Feaſt a Horſe, or the like, and the Tenant infeoffe the Father of the Lord of part, which deſcends, yet the Feoffor ſhall hold by a horſe, becauſe the ſerbice was multiplied, and each of them, viz. the Feoffor and the Feoffee held by a horſe. An. 6. R. 1. Rot. 5. War. Bruertons caſe. l. 6. fo. 2. 34. Aſſ. 15. 35. H. 6. Exec. 21. Pl. Com. 72. 40. E. 3. 46. 5. E. 2. tit. Avowry 206.

A. hath common of paſture ſauns nombre, in twenty acres of land, and ten of thoſe acres belong to A. the Common ſauns nombre is entire and incertain, and cannot be apportioned, but ſhall remain. But if it had been a Common certain, (as for ten beaſts) in that caſe the Common ſhould be apportioned. And ſo it is of Common of Eſtovers, of Turbary, of Piſcary, &c. and yet in none of theſe caſes, the deſcent, which is an act in law, ſhall work any wrong to the Terre tenant, for he ſhall have that which belongeth to him, for the act in law ſhall work no wrong.

If three Joyntenants hold by an entire yearly rent, as a horſe, or of a grain of wheat, and the Tenant ceſs by two years, and the Lord recover two parts of the land againſt two of them, and the third labes his part by rendring of the rent, &c. and finding ſurety, albeit the Lord come to the two parts by lawful recovery, grounded upon the default and wrong of the two Joyntenants, yet ſhall the entire annual rent be extinct. F. N. B. 209. 40. E. 3. 40.

If the tenant holdeth by fealty, and a buſhel of wheat, or a pound of Cumin or of Pepper, or ſuch like, and the Lord purchaſeth part of the land, there ſhall be an apportionment, as well as if the rent were in mony: and yet if the rent were by one grain of wheat, or one ſeed of Cumin, or one Pepper corn, by the purchaſe of part, the whole ſhould be extinct. But if an entire ſervice be pro bono publico as Knights ſervice, Caſtle-guard, Comage, &c. for the defence of the Realm, or to repair a bridge or a way, to keep a Beacon, or to keep the Kings Records, or for advancement of juſtice and peace, as to aid the Sheriff, or to be Conſtable of England, though the Lord purchaſe part, the ſervice remains. So it is if the tenure be pro opere de orationis ſive pietatis, as to find a Preacher, or to provide the ornaments of ſuch a Church: or pro opere charitatis, as to marry a poor Virgin, or to bind a poor Boy Apprentice, or to feed a poor man. And ſo note a diverſity between theſe caſes, and entire ſerbices for the private benefit of the Lord. Vid. Litt. Cap. Tenant in Common 71. b. Lib. 6. f. 1. 2. in Bruertons caſe. Lit. f. 49. 11. H. 7. 12. b. 24. H. 8. Tenures 53. Brooks. 35. H. 6. 6. 11. El. Dy. 285 16. E. 3. Avowry 93.

Sect. 223.

¶ Mes ſi un hõe tient ſa terre dun auter, per Homage, Fealtie, & Eſcuage, & per certaine rent, ſi le Sñr purchaſe parcel de la tẽ, &c. en tiel cas l' rent ſera apportion, come il avantdit mes uncore en ceſt caſe l' homage & fealty õmurront entier a le Sñr, car le Seignior aveta le homage & fealtie de ſon tenant pur le remnant de les

But if a man hold his land of another by homage, fealty, and Eſcuage, and certain Rent, if the Lord purchaſe part of the land, &c. in this caſe the rent ſhall be apportioned, (as is aforeſaid) but yet in this caſe the Homage and Fealty abide entire to the Lord: For the Lord ſhall have the homage and Fealty of his Tenant for the reſt of the Lands and Tenements

¶ *Purchaſe parcel del ter', &c.* Here by this (&c.) is implied, that the reaſons wherefore homage and fealty remain, and are not extinct in this caſe, are, firſt, becauſe it can be no loſs to the tenant, as it might in the caſe of an horſe or other entire ſervice, for there it may be the remnant is not ſufficient in value to pay it. Secondly, there is no land but it muſt be holden by ſome ſerbice or other and homage and fealty are the freeſt and leaſt chargeable ſerbices to the Tenant. Bruertons caſe ubi ſup. 5. E. 3. Avowry 206.

¶ *Par ceo que tiel ſervices ne ſont paſſe annual ſervices, &c.* This is Rationa, but not unica, as it appeareth by that which

 hath

Bruertons Caſe l.6. Talbots caſe l.8. f.104. 8.H.7.11.

hath been ſaid. If there be Lord and Tenant by Fealty and Herriot ſervice, and the Lord purchaſe part of the Land, the Herriot ſervice is extinct, (and yet it is not annual, but to be paid at the death of the tenant) becauſe it is entire and valuable.

¶ *Solonque lafferance & rate de la terre &c.* Here is by this (&c.) implied, That in ſome caſe where it is entire and valuable, and not annual, it ſhall

terres & tenemẽts tenus de luy, come il avoit adebant, pur ceo que tiels ſervices ne ſont paſſe annuals ſervices, & ne poyent eſtre appoꝛtion, mes leſcuage poit, & ſerra appoꝛtion ſolonque lafferance & rate de la terre, &c.

holden of him, as he had before, becauſe that ſuch ſervices are no yearly ſervices, and cannot be apportioned, but the Eſcuage may and ſhall be apportioned according to the quantity and rate of the Land, &c.

(*)7.E.3.29. Talbots caſe l.8.f.104.

not (as hath been ſaid) be extinguiſhed by purchaſe of part; (*) as Knights ſervice which is to be performed by the body of a man, if the Lord purchaſe part, yet the tenure by Knights ſervice remains for the reſidue, Quia pro bono publico, & pro defenſione regni, but the Eſcuage ſhall be apportioned, as here Littleton ſaith, becauſe that is for the benefit of the Lord, and yet it is caſual, and not annual. And where our Author ſpeaketh of ſervices, it is implied, that a Herriot cuſtom, though it be entire, valuable, and not annual, by the purchaſe of part ſhall not be extinct. On the other part, when the tenure is by an entire ſervice, and the tenant alien part of the tenancy, in what caſes the rent ſhall be multiplied (that is) where the Feoffor and the Alienee ſhall pay the entire rent ſeverally, (for regularly it holdeth, that quæ in partes dividi nequeunt, ſolida à ſingulis præſtantur) and where not, you may read at large in my * Reports.

(*) Bruertons caſe l. 6. f.1.2. Talbots caſe l. 8. f.104.

And by this (&c.) is alſo implied, that the appoꝛtionment ſhall not be according to the quantity of the land, but according to the quality or value thereof, as by that which hath been ſaid appeareth.

Sect. 224.

5.E.2.Avowry 200. * 21.E.3.58.b. 34.Aſſ.15. tit.Apportionment b.28 9.Aſſ.22.

¶ NOte here a diverſity, when the Grantee of a Rent charge cometh to a part of the Land charged by his own act, and when by the courſe of Law.

30.Aſſ.pl.12.

¶ *Purchaſe parcel de les Tenements charges en fee.* And ſo it is if the tenant giveth to the father of the grantee part of the land in Tail, and this deſcend to the Grantee, the rent ſhall be apportioned; and ſo by act in law a Rent charge may be ſuſpended for one part, and in eſſe for another.

34.H.6.41.b.

And ſo it is, if the father be grantee of a rent, and the ſon purchaſe part of the Land charged, and the father dieth after whoſe death the rent deſcends to the ſon, the rent ſhall be apportioned, and ſo it is if the grantee grant the rent to the tenant of the land and to a ſtranger, the rent is extinct but for a moiety.

¶ ITem, ſi home ad un rent charge, & ſon pier purchaſe parcel de les Tenements charges en fee, & mozuſt, & cel parcel deſcend a ſon fits, q̃ ad l' rẽt charge, oꝛe cel charge ſẽt appoꝛtion ſolonque le value de la ẽt come ẽ avantdit ẽ Rent ſervice, pur ceo que tiel poꝛtion de la terre purchaſe per la piere, ne bient al fits per ſon fait demeſne, mes per diſcent & p courſe del Ley.

ALſo, if a man hath a rent charge, and his Father purchaſe parcel of the Tenements charged in fee, and dieth, and this parcel deſcends to his Son, who hath the rent charge, now this charge ſhall be apportioned according to the value of the Land, as is aforeſaid of Rent ſervice, becauſe ſuch portion of the Land purchaſed by the Father, cometh not to the Son by his own fact, but by deſcent and by courſe of Law.

If

If a man hath iſſue two daughters, and grant a rent charge out of his land to one of them and dieth, the Rent ſhall be apportioned, and if the grantee in this caſe purchaſeth another of her part of the land, yet the moiety of the rent remaineth iſſuing out of her ſiſters part, becauſe the part of the Grantee in the land by the deſcent was diſcharged of the Rent. But in all theſe caſes where the rent charge is apportioned by act in Law, yet the writ of Annuity faileth, for if the Grantee ſhould bring a Writ of Annuity, he muſt ground it upon the grant by Deed, and then muſt be as it hath been ſaid being it for the whole. 9. Aſſ. 22.

Annua nec debitum Judex non ſeparat ipſum. 5. R. 2 Annuity 21.

Alſo in reſpect of the realty the Rent is apportioned, but the perſonalty is indiviſible, and by act in Law ſhall not be divided. If Execution be ſued of body and lands upon a Statute Merchant or Staple, and after the inheritance of part of thoſe lands deſcend to the Conuſee, all the Execution is avoided, for the duty is perſonal, and cannot be divided by act in Law. Pl. Com. 72. 35. H. 6. tit. Execut. 21. 15. E. 4. 5.

¶ *Ne vient al fitz per ſon fait demeſne mes per diſcent & per courſe del ley.*

If the father within age purchaſe part of the land charged, and alieneth within age and dieth, the ſon recovereth in a writ of Dum fuit infra ætatem, or entreth: In this caſe the act of Law is mixt with the act of the party, and yet the Rent ſhall be apportioned, for after the recovery or entry the Son hath the land by deſcent.

So it is in caſe the Son recovereth part of the land upon an alienation by his father, Dum non fuit compos mentis, the Rent ſhall be apportioned for the cauſe aforeſaid.

A man ſeiſed of lands in fee taketh a wife, and maketh a feoffment in fee, the feoffee grants a rent charge of 10 pound out of the land to the feoffor and his wife, and to the heirs of the husband, the husband dieth, the wife recovereth the moiety for her Dower by the cuſtom, the Rent charge ſhall be apportioned and ſhe may diſtrain for five pound which is the moity of the rent. In which caſe two notable things are to be obſerved. Firſt, albeit the Dower be by relation or fiction of Law a bode the rent, yet when the wife recovereth her Dower, ſhe ſhall not have her entire rent out of the reſidue, for a relation or fiction of Law ſhall never work a wrong or charge to a third perſon, but in fictione juris ſemper eſt æquitas. Secondly, that albeit her own act do concur with the act in Law, yet the rent ſhall be apportioned. 5. E. 2. Avowry 206. Lib. 3. fo. 29. in Butler and Bakers caſe.

Sect. 225.

¶ Item, ſi ſoit ſeir le tenant, & le tenant tient de ſ Seignior per fealty & certaine rent, & le Seir grant le rent p ſ fait a un auter, &c. reſervant a luy le fealty, & le tenant attorna al grantee de l rent, ore tiel rent eſt rent ſeck a le grantee, que ceo que les tenements ne ſont tenus del grantee de le rent, mes ſont tenus del ſeignior que reſerve a luy fealtie.

ALſo if there be Lord and tenant, and the tenant holds of his Lord by fealty and certain rent, and the Lord grants the rent by his deed to another reſerving the fealty to himſelf, and the Tenant attorns to the grantee of the rent, now this rent is rent ſeck to the grantee, becauſe the tenements are not holden of the grantee of the rent, but are holden of the Lord who reſerved to him the fealty.

¶ *Et ſic Seignior grant le Rent, &c.*

So it is if the Lord releaſe the Rent to the Tenant ſaving the fealty, the Rent is extinct. But if there be Lord and Tenant by fealty and Rent, and the Lord by his Deed reciting the tenure releaſe all his right to the land ſaving his ſaid Rent, the Seigniory remains and he ſhall have the Rent as a rent Service, and the fealty incident to it, for the ſaid Rent is as much to ſay as the rent Service wherunto fealty is incident. 12. E. 4. 11. 9. E. 3. 1. 40. E. 3. 23. b. 13. E. 3. tit. Releaſes 36.

Alſo if the Lord hath iſſue two daughters and dieth, and upon partition the fealty is allotted to the one and the Rent to the other, ſhe ſhall have the Rent as a Rent ſeck. 17. E. 3. 72. b.

If there be a Lord of a Mannor and Tenant by fealty, to him the ſuit of Court and to Court, becauſe the Grant- 17. E. 3. 72. b.

Suit of Court and Rent, the Lord grant the fealty ſaving Rent, the ſaving is good for the Rent, but not for the Suit

tes can keep no Court, and there is no tenure of the Grantor, and therefore the suit of Court is lost and perished in that case.

If the Donee hold of the Donor by fealty and certain Rent, and the Donor grant the services to another, and the Tenant attorn, some have said the Rent shall not pass, because the Rent cannot pass but as a Rent service being granted by the name of services, and the fealty cannot pass, because as hath been said, the fealty is incident inseparable to the reversion. But it seemeth that the Rent shall pass as a Rent seek, because at the time of the grant it was a Rent service in the Grantor, and therefore there be words sufficient to pass it to the Grantee, and it is not of necessity that it shall be a rent service in the hands of the Grantee.

7 E.3.2.b.Fitz-Warrens case. If there be Lord and Tenant by fealty and certain rent, and the Lord by deed grant the rent in fee saving the fealty, and grant further by the same Deed that the Grantee may distrain for the same Rent in the tenancy, albeit a Distress were incident to the Rent in the hands of the Grantor, and although a Tenant attorn to the grant, yet cannot the Grantee distrain, for the Distress remains as an incident inseparable to the Seigniory, for then the Tenant should be subject to two several distresses of two several men. And so it is if the Lord in that case grant the Rent in tail or for life, saving the fealty, and further grant that the Grantee may distrain for it, albeit the reddition of the Rent be a Rent service, yet the Donee or Grantee shall have it but as Rent seek, and shall not distrain for it.

7.E.3.2.3.Adjudged.

31.Ass.31.17.Ass.10., 32.Ass.pl.10.F.N.B. 178. D. 22.H.6.3.b. 4.E.2. Ass.449.28.H.8.Dier 51 It is to be observed that where a Rent service is become a Rent seek by severance of the same from the Seigniory, that now the nature of the Rent is changed, for if the Grantee purchase part of the Land, the whole Rent shall be extinct. And whereas in an Assise for a Rent service, all the Tenants of the Land need not to be named, but such as did the disseisin; yet in Assise for the Rent seek which sometimes was a rent service, all the tenants must be named, as in case of a rent charge, albeit he were disseised but by one sole tenant, but if the Lord of a Mannor release the fealty to his Tenant, saving the rent, or that a Messualty become a rent by Surrejalage, those that are now Seek (and sometimes were service) are part of the Mannor, but a Rent charge cannot be part of a Mannor.

(*)31.Ass.23.22.Ass.53

Attorne, &c. Of Attornment shall be hereafter said in his proper Chapter and place.

Sect. 226.

Si le Seignior vient grunter per son fait le homage, &c. It is to be observed that where the Seigniory is by homage, fealty and rent, (a) if the Lord grant away the homage, the fealty shall pass, for fealty is an incident inseparable to homage (b) and cannot by any saving in any grant be separated from it, for homage cannot be sole or alone, but the rent (though it be not seised) shall not pass in that case, because the rent is not incident to homage: and so it is if there be lord and tenant by fealty and rent, and the Lord grant over the fealty without any savings, the rent passeth not, but fealty hath an incident inseparable belonging to it, which by no saving can be separated, and that is a Distress, for as Littleton saith here, a service cannot be serv'd (that is) without some Di-

(a) 40.E.3.22.per curia

(b) 44.E.3.19.20. 39.H.6.25.29.Ass.pl.20. 26.Ass.p.38.

211

EQuemesm̃ le mā-ner est lou hõe tient sa terre per homage, fealtie, & certaine rent, si le Sr̃ grant la rent, savant a luy le homage, tiel rent apres tiel grant est rent seche. Mes la ou terres sont tenus per homage, fealty, & certeine rent, si le Sr̃ voit granter per s̃ fait le homage de son tenãt a un auter, savant a luy le remnant des ser-vices, & le tenant attorna a luy, solonqz le forme del graunt, en cest case le tenant

IN the same manner, where a man holds his Land by homage, fealty, and certain rent, if the Lord grant the rent, saving to him the homage, such rent after such grant is rent seek. But there where Lands are holden by homage, fealty, and certain rent, if the Lord will grant by his deed the homage of his tenant to another, saving to him the remnant of his services, and the tenant attorn to him according to the form of the grant, in this case

tiendra

tiendra ſa terre del grantee, & le Sñr q̄ grantaſt le homage, naverа forſq̄ le rent come rent ſecke, & ne unques diſtreyneра pur le rent, pur ceo que homage, ne fealtie, ne eſcueage, ne poit eſtre dit ſeck, car nul tiel ſerviee poit eſtre dit ſeck. Car celuy que ad ou doit aver homage, ou fealtie, ou eſcuage de ſa terre poit per commen droit diſtreyner pur ceo ſil ſoit adeтre, car homage, fealtie, & eſcuage ſont ſerviees, per queux terres ou tenements ſont tenus, &c. & ſont tiels hen nul maner poiet eſtr prizes forſq̄ come ſervices, &c.

the tenant ſhall hold his land of the grantee, and the Lord who granted the Homage ſhal have but the rentas a rent ſeck, & ſhall never diſtrain for the rent becauſe that homage nor fealty nor eſcuage cannot be ſaid ſeck, for no ſuch ſervice may be ſaid ſeck. For he which hath or ought to have homage, fealty, or eſcuage of his Land, may by common right diſtrain for it, if it be behind. For Homage, Fealty, and Eſcuage are Services by which Lands or Tenements are holden, &c. and are ſuch ſervices as in no manner can be taken but as Services, &c.

ſtreſs belonging to it, for then it were not a ſervice, and ſo of Homage and Eſcuage.

¶ *Terres ou tenements ſont tenus, &c.* By this (&c.) and out of this Section it may be collected, that if (c) there be Lord and Tenant by Fealty and Rent, the Annual Rent which is a profitable Service is of higher and more reſpect in Law then the Fealty, and therefore by the grant of the rent the Fealty ſhall paſs as an incident thereunto, but it is an incident ſeparable, and therefore may be by a ſaving as Littleton hath ſaid, ſeparated from it. And ſo when the tenure is by Fealty and rent, and the rent be recovered, the fealty ſhall included-ly be recovered. (d) And where the tenure is by Homage, Fealty, and Rent, by the recovery of the rent with the appurtenances upon a former right, the homage and fealty alſo ſhall be reſtored by neceſſity and indulgence of the Law, for ſeeing the Law giveth no Præcipe for the Homage and Fealty, but for the rent only, reaſon would that by the recovery of the rent, the whole entire Seigniory ſhall be includedly reſtored in that caſe. But if the recovery be without title, there the rent is recovered as a rent ſeck, for that worketh no more then a grant, (*) but by the recovery of a Mannor, whether it be by title or without title, homage, fealty, and all other Services parcel of the Mannor are recovered. And albeit Fealty cannot be divided from Homage by grant (as hath been ſaid) yet by extinguiſhment it may: (e) as if there be Lord and Tenant by Homage, Fealty, and Rent, and the Lord releaſe the Seigniory and Services, or all his right in the Land ſaving the Fealty and Rent, or ſaving the ſaid Rent, or if he by expreſs words releaſe the Homage ſaving the Fealty and Rent, there the Fealty and Rent remain, for the Homage is extinct. And ſo note a diverſity between a grant and a Releaſe in that caſe. But ſo long as Homage continues, the Fealty cannot be divided from it.

(c) 44.E.3.19.26.Aſſ.38 29.Aſſ.p.20. 9.E.3.2. 39.H.6.24.25.27.H.8.20 8.E.4.28.

(d) Temps H.8. Br. tit. incidents 24. 44.E.3.19.29.Aſſ.20. 39.H.6.24.25.

(*) Vide Sect.149.

(e) 9.E.3.1.

¶ *Forſque come ſervices, &c.* Here is implied a diverſity between theſe corporal ſervices of Homage, Fealty, and Eſcuage, which cannot become ſeck or dry, but make tenure whereunto Diſtreſſes, Eſcheats, and other profits be incident, and other corporal ſervices; as to plough, repair, attend, and the like, and all Rents whatſoever, for they may become ſeck or dry, and make no tenure.

Sect. 227.

¶ MEs auterment eſt de rent que fuit un foits rent ſervice, pur ceo que quant

BUt otherwiſe it is of a Rent which was once Rent Service, becauſe when it is ſevered

¶ ET *le Seignior ne poit grant tiel rent one diſtres, come eſt dit.* (f) For the

(f) 7.E.3.1.3.

the diſtreſs is an incident inſeparable to the fealty as hath been ſaid (g) and therefore a releaſe of diſtreſs is void.

(g) 7.E.4.11.

3.H.7.4.5.

¶ *Incident.* Incidens a thing appertaining to or following another or a more worthy or principal, whereof you ſee here, and in divers other places of Littletons examples. And of incidents ſome be ſeparable, and ſome inſeparable, as hath been ſaid.

il eſt ſever per le grant le Seignior de les auters ſervices, il ne poit eſtre dit rent Service, pur ceo que il ne ad a ceo fealty, que eſt incident a chescun manner de rent ſervice, & pur t̄ eſt dit rent ſecke, & le ſeignior ne poit grant tiel rent oue diſtreſſe, come eſt dit.

by the grant of the Lord from the other ſervices, it cannot be ſaid Rent Service, for that it hath not fealty unto it, which is incident to every manner of Rent Service, and therefore it is called Rent ſeck. And the Lord cannot grant ſuch a rent with a diſtreſs, as it is ſaid.

Sect. 228.

¶ *Savant a luy le reverſion, &c.* By this word (&c.) is to be obſerved (h) that this Rent reſerved is a Rent Service, and hath fealty incident to it, and both Rent and fealty are incident to the reverſion, viz. (i) the Rent incident to the Reverſion ſeparably, but the fealty incident to the Reverſion inſeparably, but by the grant of the Rent, the fealty in this caſe ſhall not paſs, becauſe the fealty is inſeparably incident to the reverſion, but the Grantee ſhall have the rent as a rent ſeck Alſo by this (&c.) is implyed an attornement of the tenant, for without that, although by the grant the Rent is turned to a rent ſeck, ſo as the Tenant cannot be charged with any diſtreſs, yet to the paſſing thereof, there muſt be an attornement.

(h) 41.E.3.16.

(i) 12.E.4.3.32.H.8.tit. Patents Br.26.Aſſ.66. 48.E.3.9.b. Doct.& Stud. l.2.c.9.

¶ Item ſi hõe leſſa a un auter terr̄s pur terme de vie, reſervant a luy certain rent, ſil grant le rent a un auter p ſon fait, ſavant a luy le reverſion de la terre iſſint leſſe, &c. tiel rent neſt forſque rent ſeck pur ceo que l'grantee nad riens en le reverſion del terre, &c. Mes ſil grant le reverſion del terre a un auter pur terme de vie, & le tenant atturne, &c. donques ad le grantee le rent come rent ſervice, pur ceo que il ad le reverſion pur terme de vie.

ALſo if a man let to another lands for term of life reſerving to him certain Rent, if he grant the Rent to another by his Deed, ſaving to him the Reverſion of the Land ſo letten, &c. ſuch Rent is but a Rent ſeck, becauſe that the grantee had nothing in the Reverſion of the Land, &c. but if he grant the Reverſion of the Land to another for term of life, and the Tenant attorn, &c. then hath the grantee the Rent as a Rent ſervice, for that he hath the reverſion for term of life.

¶ *Donques ad le grantee le rent come rent ſervice pur ceo que il ad le reverſion pur terme de vie.* And the reaſon hereof is, becauſe the Rent is incident to the Reverſion, as hath been ſaid, and (as Littleton ſaith here) paſſeth away by the grant of the Reverſion, as with the Superior without ſaying, Cum pertinentiis, &c. for the reverſion cannot be ſeck: But by the grant of the Rent the reverſion doth not paſs.

Sect. 229.

¶ Et iſſint eſt a entendue que ſi home dona terrez ou tenements en le taile, rendant a luy & a ſes heires certaine Rent, ou lessa terre pur terme de vie, rendant certaine rent, ſil granta le reverſion a un auter, &c. & le tenant atturna, tout le rent & ſervice paſſe per ceſt parol (reverſion) pur ceo que tiel rent & ſervice en tiel cas ſont incidents a le reverſion, & paſſont per le grant de le reverſion. Mes coment que il granta le rent a un auter, le reverſion ne paſſa my per tiel grant, &c.

And ſo it is to be intended, that if a man give Lands or Tenements in tail, yielding to him and to his Heirs a certain rent, or letteth Land for term of life rendring a certain rent, if he grant the Reverſion to another, &c. and the Tenant atturn, all the Rent and Service paſs by this word (Reverſion) becauſe that ſuch Rent and Service in ſuch caſe are incident to the Reverſion, and paſs by the grant of the reverſion. But albeit that he granteth the Rent to another, the Reverſion doth not paſs by ſuch grant, &c.

¶ This needs no explication, but is evident by that which hath formerly been ſaid, ſaving by this (&c.) in the end is implied the old rule, That the incident ſhall paſs by the grant of the principal, but not the principal by the grant of the incident, Acceſſorium non ducit, ſed ſequitur ſuum principale.

Sect. 230.

¶ Iſſint nota le diverſitie. Et iſſint eſt tenus, P. 21. E. 4. Mes il eſt adiudge, An. 26. lib. Aſſiſarum, ou les ſervices del tenant en taile fueront grants, q̄ ſuit bone grant, nient obſtant que le reverſion demurt. ¶

So note the diverſity. And ſo it is holden, *P.* 21. *E.* 4. But it is adjudged 26. of the book of Aſſiſes, where the Services of Tenant in tail were granted, that this was a good grant, notwithſtanding that the Reverſion remain. ¶

¶ This is added to Littleton. And therefore as I have done heretofore, and ſhall do hereafter in like caſes, I paſs it over. And the caſe here cited in 26. Aſſ. p. 66. was contra opinionem multorum, and afterwards that judgment was reverſed by Writ of Error, for that the Services remained with the Reverſion as incidents inſeparable.

Sect. 231.

¶ Item ſi ſoit ſeigniorz, meſne, & tenant, & le tenant tient del meſne per ſervice de v. ſ. & le meſne tient ouſter per ſervice

Alſo if there be Lord, meſne and tenant, and the tenant holdeth of the meſne by the ſervice of five ſhillings, and the meſne

¶ *Si ſoit Seignior, meſne & tenant &c. ſi le Seignior Paramount purchaſe le Seigniorie en fee, &c.*

(k) Some have ſaid that in (k) 20. E 3. Avowry 176

3.E.2.tit.Exting.6. 26.H.6.ibid.7.

in this caſe it were reaſon, that by the purchaſe of the Lord paramount, his Seigniory ſhould be only extinct, and that he ſhould become tenant to the Meſne, and the Meſne to hold over as the Lord paramount held. But that cannot be, for that one man cannot be both lord and tenant, nor one land immediately holden of divers lords.

(l) 7. Aſſ. 2. 7.E.3.20.

(l) If the Tenant infeoffe the Lord paramount and his Wife, and their heirs, in this caſe the Meſnalty is but ſuſpended, for if the Wife ſurvive, both Meſnalty and Seigniory are revived.

It is ſaid, that if there be Lord, Meſne and Tenant, each of them by fealty and ſix pence, the Lord confirm the ſtate of the Tenant, to hold of him by fealty, and three pence, that the meſnalty is extinct. (m) And ſo in the ſame caſe, if the Tenant be an Abbot, and the Lord confirm his eſtate to hold of him in Frankalmoigne, the meſnalty is extinct. (n) So it is if the Lord releaſe to the tenant, for whether the Lord purchaſe the tenancy, or the Tenant the Seigniory, the meſnalty is extinct. And albeit the Meſne grant the Meſnalty for life, and then the Lord releaſe to the Tenant, both the reverſion and the eſtate for life are drowned (o) So if there be Lord and Tenant, and the Tenant make a gift in tail, the remainder to the King, the Seigniory is extinct.

(m) 4. E.3.19. See for this hereafter in the Chapter of Confirmation, Sect.

(n) 8.H.6.24.

o) 4.& 5.P.&M.Dy.154

de xii. d. ſi le Seignior paramont purchaſe le tenancie en fee, donques le ſervice de le meſnaltie eſt extinct, pur ceo q̄ quant le Seignior paramont ad le tenancie, il tient de ſon Seignior procheine paramont a luy, & il doit tener ceo de luy que fuit meſne, donques il tiendra un meſne tenancie immediate de divers Seigniors, per divers ſervices, q̄ ſerroit inconvenient, & la ley voit plus toſt ſuffer un miſchiefe q̄ un inconvenience, & pur ceo le Seigniory del meſnaltie eſt extinct.

holdeth over by the ſervice of 12 pence, if the Lord Paramount purchaſe the tenancy in fee, then the ſervice of the meſnalty is extinct, becauſe that when the Lord Paramount hath the tenancy, he holdeth of his Lord next Paramount to him, and if he ſhould hold this of him which was Meſne, then he ſhould hold the ſame tenancy immediately of divers Lords by divers Services, which ſhould be inconvenient, and the Law will ſooner ſuffer a miſchief then an inconvenience, and therefore the Seigniory of the Meſnalty is extinct.

Vide Sect. 138, 139.

¶ *Que ſerra inconvenient.* Here it appeareth, That Argumentum ab inconvenienti is forcible in Law, as hath been ſaid before, and ſhall be often obſerved hereafter.

p) 13.H.4.3.40.Aſſ.p.27 12.E.2.Vouch.81.

¶ (p) *Le ley voit plus toſt ſuffer miſchiefe que inconvenience,* Lex cidus tolerare vult privatum damnum, quam publicum malum. Here be two maxims of the Common Law.

Firſt, That no man can hold one and the ſame Land immediately of two ſeveral Lords.

Secondly, That one man cannot of the ſame Land be both Lord and Tenant. And it is to be obſerved, that it is holden for an inconvenience, that any of the Maxims of the Law ſhould be broken, though a private man ſuffer loſs; for that by infringing of a Maxim, not only a general prejudice to many, but in the end a publick incertainty and confuſion to all would follow. And the rule of Law is regularly true, Res inter alios acta alteri nocere non debet. But factum unius alteri nocere non debet, which are true with this exception, unleſs an inconvenience ſhould follow, as our Author here teacheth us.

Sect. 232.

¶ *IL avera le illi. s. come Rent Secke.*

¶ MEs entant q̄ le tenant te-

BUt in as much as the Tenant holds

nus

nuſt del meſne p v.s. q̄ le meſn̄ tenuſt forſque per xii. d. iſſint que il avoit pluis en advantage per iiii. s. que il payaſt a ſon Seignior, il averа les dits iiii. s. come Rent Seck annuelment de le Seignior que purchaſe le Tenancie.

of the Meſne by five ſhillings, and the meſne hold but by twelve pence, ſo as he hath more in advantage by four ſhillings, than he payes to his Lord, he ſhall have the ſaid four ſhillings as a Rent Seck yearly of the Lord which purchaſed the Tenancy.

And yet he ſhall diſtrain for it, for ſeeing the fealty is extinct, the Law reſerves the diſtreſs to the rent, for as it hath been ſaid in the like caſe, ſeeing the fealty is extinct, the diſtreſs by act in Law may be preſerved. Quia quando lex aliquid alicui concedit, concedere videtur & id ſine quo res ipſa eſſe non poteſt. (r) And therefore if a man maketh a leaſe for life, reſerving a rent, and bind himſelf in a ſtatute, and hath the rent extended and delivered to him, (q) 13.H.4.Avowry 237

he ſhall diſtrain for the rent, becauſe he cometh to it by courſe of Law.

(ſ) But if a Rent ſervice be made a Rent ſeck by the grant of the Lord, the Grantee ſhall not diſtrain for it, for that the diſtreſs remains with the fealty. (t) If there be Lord, meſne and tenant, and the meſnalty is a Manor having divers freeholders, and the Lord purchaſe one of the Tenancies, and there is a rent by ſurpluſage, this rent albeit it be changed into another nature, (as hath been ſaid) is parcel of the Manor. But yet by purchaſe of part of the Land, the whole rent is extinct, albeit the Law did preſerve it. (ſ) 28.E.3.93. (t) 31.Aſſ.23. 22.Aſſ.53. 2.H.6.14.

Sect. 233.

¶ Item ſi home q̄ ad Rent Seck eſt un foits ſeiſi daſcun parcel de le Rent & ayes l' Tenant ne voit payer l' rent a derere, ceo eſt ſon remedie, il covient de aler per luy ou per aũs, a les terres ou tenements dont l' rent eſt iſſuant, & la demaund les arerages d̄ rent, & ſi le Tenant denia ceo de payer, ceſt denier eſt un diſſeiſin d̄ le rent. Auxy ſi le tenant ne ſoit adonq̄s puiſt a payer, ceo ẽ un denier que eſt un diſſeiſin de rent. Auxy ſi l' Tenant ne nul auter home ſoit demurrant ſur les terres

Alſo if a man which hath a Rent ſeck be once ſeiſed of any parcel of the rent, and after the Tenant will not pay the rent behind, this is his remedy, he ought to go by himſelf or by others, to the Lands or Tenements, out of which the rent is iſſuing, and there demand the arrearages of the rent, and if the tenant deny to pay it, this denial is a diſſeiſin of the rent. Alſo if the Tenant be not then ready to pay it, this is a denial, which is a diſſeiſin of the rent. Alſo if the Tenant nor any other man be remai-

¶ *Seiſin*, or Seiſon, is common as well to the Engliſh, as to the French, and ſignifies in the common Law, poſſeſſion, whereof ſeiſina a Latin word is made, and Seiſire a verb.

¶ *Daſcun parcel.* (u) A ſeiſin of parcel, is a ſufficient ſeiſin in Law, to have an Aſſiſe of the whole rent. (u) 5.E.4.2.

Concerning the general learning of ſeiſins, you may read Lib.4. Bevils caſe, fol. 8. lib.5. fol.98. lib.6. fol.57. li.7. fol.24.29. lib.9. fol. 33. And many authorities of Law there cited, but ſufficient is ſaid here to explain Littleton T.18.E.1.coram Rege Nott. in Theſaur.

¶ *A les Terres, &c.* (w) For a demand of the tenant out of the Land is not ſufficient: but if there be a houſe and land, a demand on the land is ſufficient, but for a condition broken, it ought to be at the houſe, as hath been ſaid before. (w) 49.E.3.14.b. 14.E.4.4. Pl.Com.71.

¶ *Arere.* This word Arere, is to be obſerved, for it is not neceſſary that the

the grantee of the rent should demand it at the very time when it precisely falleth due, but at any time after it is sufficient, for this is not like a demand of a rent upon a condition, because that is penal and oustes the whole state, and (x) therefore the time of demand must be certain, to the end the Lessee, Donee, or Feoffee may be there to pay the rent, but a demand of a Rent seck or Rent charge is but only a formal mean to recover that which is due, (y) and therefore in that case it may be demanded after it is behind at any time whether the Tenant be present or no, for remedies for rights are ever favourably extended.

(x) 29. Ass. 51. 8. H. 6. 11. Lib. de Entries 79. b.

(y) Mich. 41. E. 3. coram Rege adjudge accordingly.

ou les tenements pur payer le rent quant il demaund les arrerages, ceo est un denier en ley & un disseisin en fait, & de tiels disseisins il poit aver Assise de Novel disseisin envers l'tenãt, & recovera l' seisin del rent, & ses arrerages & ses damages, & les costages & sõ brẽ & de s̃ plee, &c. Et si apres tiel recovery & execution ewe le rent soyt auter foits a luy denie, donque il avera un redisseisin, & recovera ses double damages, &c.

ning upon the lands or tenements to pay the rent when he demandeth the arrearages, this is a denial in Law, and a disseisin in deed, and of such disseisins he may have an Assise of *Novel disseisin* against the tenant, and shall recover the seisin of the rent, and his arrearages, and his damages, and the costs of his writ and of his plea, &c. And if after such recovery and execution had, the rent be again denied unto him, then he shall have a redisseisin, and shall recover his double damages, &c.

¶ *Ceo est un denier en ley.* For wheresoever there is a lawful demand of a Rent, and the same is not paid, whether the Tenant be present or absent, yet this is a denial in Law, albeit there be no words of denial. It appeareth here that the demand must be made upon the Land, and albeit the Tenant nor any for him be there, yet must the Grantee demand it, because without a demand there can be no Denier in Deed, or in Law.

¶ *Disseisin.* (z) Disseisina, is a putting out of a man out of seisin, and ever implieth a wrong. But dispossessing or esstment is a putting out of possession, and may be by right or by wrong, * Omnis disseisina est transgressio, sed non omnis transgressio est disseisina, si quis mo forte ingrediatur fundum alienum, non quod sibi usurpet tenementum, vel jura, non facit disseisinam, sed transgressionem, &c. quærendum est à judice quo animo hoc fecerit, &c. And of ancient time a Disseisin was defined thus, Disseisin est un personel trespas de tortious oustes de seisin.

(z) Vid. Bract. l. 4. f. 161. 262. 204. Brit. c. 42. 43 &c. f. 83. 106. 114. 115. 118. Mir. c. 2. Sect. 1. * Fleta l. 4. c. 1. Br. ubi supra.

¶ *Assise de novel disseisin.* Assisa novæ disseisinæ. Assisa properly cometh of the Latin word Assideo, which is to associate or sit together; so as properly Assise is an assemblie or sitting together. And the Writ whereby certain persons are authorized and called together is called Assisa novæ disseisinæ; so as Assisa is but Sessio, but because Sessio is but a general word, therefore in this sense Assisa is used in Law for a particular Session by force of the Writ de Assisa novæ disseisinæ, and accordingly it was anciently said Assise in one case assisurit chose que cession des Justices: and it is called Assisa novæ disseisinæ, for that the Justices of Eire before whom these Assises were taken in their proper Counties did give their Circuits from 7 years to 7 years, and no Disseisin before the Eire if it were not complained of in the Eire could be questioned after the Eire, and therefore a Disseisin committed before the last Eire was called an ancient Disseisin, and a Disseisin after the last Eire was called a new disseisin or Nova disseisina. Assisa also signifieth a Jury, of their sitting together, and also a Session of Parliament, as Littleton betweaker in this Chapter sheweth.

Mir. c. 2. Sect. 15. Bract. l. 4. c. 4. Brit. c. 44. 45. &c. Fleta l. 4. c. 5. & 2. & 3.

Mir. c. 2. Sect. 15.

¶ *Et recovera le seisin del rent.* Here, and by the (&c) in the end of this Section is implied, that our Author intendeth his case where the rent issueth out of Lands in one County, for if a man be seised of two Acres of Land in two several Counties, and maketh a Lease of both of them, reserving two shillings rent, in this case, albeit several Liveries be made at several times, yet it is but one entire rent in respect of the necessity of the case, and he shall distrain in one County for the whole, and make one Avowry for the whole. But he shall have several Assises in continio comitatus, and in either County shall make

made his plaint of the whole rent, but there shall be but one Patent to the Justices (a) And this Assise in comitatu, is given by the Statute of 7. R. 2. c. 10. for no Assise lay in that case at the Common Law, but the party might distrain. (b) But for a Common of pasture, of Turbary, of Pischary, of Estovers, and the like in one County, appendant or appurtenant to land in another County, an Assise in comitatu, did lie at the Common Law (c) and so it is of a Nusans done in one County, to lands lying in another County, the like Assise did lie at the Common Law.

(a) 10. Ass. pl. 4. 18. Ass. p. 1. & 18. E. 3. 32 22. H. 6. 9. 10.
(b) F.N.B. 180. a.
(c) F.N.B. 183. k.

(d) And albeit the Counties do not adjoyn, but there be 20 Counties mean between them, yet the Assise in comitatu doth lie, and the Justices shall sit between the said Counties. (e) And where it is said before of two Counties, the like law it is if the same extend into more Counties.

(d) 5. E. 4. 2.
(e) F.N.B. 180. a.

(f) If a man hold divers Mannors or Lands in divers several Counties by one tenure, and the Lord is deforced of his services, he shall have several Writs of Customs and Services, for every County one Writ returnable at one day in the Court of Common Pleas, and thereupon count according to his case by the Common Law.

(f) 30. E. 1. tit. Droit. F.N.B. 151. m.

(g) But if the Tenant in that case do cease, the Lord shall not have several Writs of Cessavit ut supra, for the Writ of Cessavit is given by Statute,* and the form and manner of the Writ therein prescribed, and thereupon it is holden in our Books that in that Case a Cessavit doth not lie,

(g) 18. Ass. pl. 1.
* W. 2. c. 21.

¶ (h) *Il avera un redisseisin & recovera ses double damages, &c.* Here by this (&c.) is also to be understood, that a Writ of Redisseisin is given by the Statute of Merton * (so called because the Parliament was holden at Merton, Anno 20. H. 3.) the latter whereof is, Item si quis fuerit dissesitus de libero tenemento & coram Justiciariis itinerantibus seisinam suam recuperaverit per Assisam novæ disseisinæ vel per recognition' eorum qui fecerint disseisinam, & ipse disseisitus, per vicecomitem seisinam suam habuerit, si iidem disseisitores postea post iter Justiciariorum vel infra de eodem tenemento iterum eundem conquerentem disseisiverint, & inde convicti fuerint, statim capiantur, &c. But the double damages are given by the Statute of W. 2. c. 26.

(h) Bracton fo. 216. Britton 133. 246. Fleta l. 4. c. 29. Merton c. 2. Sect. 15. Regist. 206, 207. * Mirror c. 3. W. 2. c. 46 Vide Sect. 234.

Vide Regist. 206. b.

And Littleton in few words hath made a good exposition of this Statute, for where the Statute saith, Disseisitus de libero tenemento, Littleton expounds it (i) to extend to a Rent seck, or Rent charge, albeit, as hath been said, they be against common right, yet a man hath a freehold in them. (k) And he that granteth Omnia tenementa sua, a Rent charge or a Rent seck doth pass,

(i) 40. Ass. 23. ac.
(k) 14 E. 4. 4. 11. H. 6. 22.

Coram Justiciariis itinerantibus, &c. saith the Statute. But Littleton speaketh generally, and so is the Statute to be intended before any other Justices that have authority to take Assises, and Justices Itinerant are set down but for an example, which is worthy of the observation, (l) being a penal Law,

(l) Fitz. N. B. 189. k.

Recuperaverit per assisam, &c. saith the Statute, here assisa is taken for the verdict of the Assise, as Littleton hereafter in this chapter expounds the same. Vel per recognitionem, &c. or by confession. Then the question is, what if the recovery were upon a demurrer or by pleading of a Record and faller of it, or by any other manner? And seeing Littleton speaketh generally, it must be understood of all manner of recoveries in an Assise of Novel disseisin; and so it is confirmed by the Statute of W. 2. c. 26.

¶ *Recoverie.* Recuperatio cometh of the verb Recuperare, i. ad rem per injuriam extortam sive detentam per sententiam Judicis restitui. And Recuperatio in the Common Law, is all one with Evictio in the Civil Law, which is, Alicujus rei in causam alterius abductæ per judicem acquisitio.

¶ *Et execution ewe,* Per vicecomitem seisinam habuerit, saith the Statute, but Littleton speaketh generally (Et execution ewe.) And execution had, so as whether it be by the Sheriff or by the party, so as execution or possession be had, it sufficeth.

¶ *Execution,* Executio, and signifieth in Law, The obtaining or actual possession of any thing acquired by judgement of Law, or by a Fine executory ledied, whether it be by the Sheriff, or by the entry of the party, whereof you shall read more hereafter.

Vide Sect. 504.

More, it appeareth here by Littleton, That (m) the recovery in a former Writ must be in Assise of Novel disseisin, wherein these words (Tiel recoverie) are to be observed. And therefore if in a Writ of Right close in antient Demesne, the Demandant maketh his protestation to sue in the nature of Assise of Novel disseisin, and after is redisseised, he shall not have a Writ of Redisseisin, because the first recovery was not by Writ of Assise of Novel disseisin. (n) And so it is if the recovery were in Assise of fresh force by Bill, according to the custom of some City or Burrough, also in antient Demesne there be no Coroners.

(m) 14. E. 2. tit. Rediss. 9. F.N.B 189. g.
(n) 14. E. 3. tit. Rediss. 8. Vid. the 2. part of the Institutes, Statute Merton, cap. 3.
(o) 9. H. 4. 5. F.N.B. 189. c. 23. A. pl 7.

Si iidem disseisitores, saith the Statute. (o) Now as it must be the same Disseisors: but here

Idem is taken for non alii. And therefore if the recovery in the Aſſiſe were againſt two Diſſeiſors, and one of them rediſſeiſe him again, he ſhall have a Rediſſeiſin againſt him, for he is not alius. But if the recovery had been againſt one, and he and another rediſſeiſe the plaintiff, he ſhall not have a Rediſſeiſin, for here is alius, and he cannot have a Rediſſeiſin againſt the former Diſſeiſor alone, becauſe he is Joyntenant with another. (p) For Joyntenancy in a Writ of Rediſſeiſin is a good plea, and a ſtranger ſhall not be ſubject to double impriſonment and double damages.

(p) 33.E.3.rediſſeiſin 7.

(q) If a recovery be had againſt a woman in an Aſſiſe of Novel Diſſeiſin, and the Plaintiff recovereth and hath execution, the woman taketh husband, and both of them rediſſeiſe the Plaintiff, he ſhall not have a Rediſſeiſin, becauſe the husband is alius (r) And yet if a Feme recover in an Aſſiſe, and after take Baron, and they are rediſſeiſed, the Husband and Wife ſhall have a Rediſſeiſin, becauſe the husband joyneth for conformity, and it is in the right of his Wife who was diſſeiſed before, ſo in effect it is idem diſſeiſitus & idem conquerens.

9.H.4.5.F.N.B.188.E

(r) F.N.B.188.E. Regiſtr. 9.H.4.5.

If two Coparceners be diſſeiſed, and recover in an Aſſiſe, if after they make partition, and after they be ſeverally diſſeiſed, they ſhall have ſeveral rediſſeiſins; and ſo it is of Joyntenants, for they be idem conquerentes, & non alii. Alſo a rediſſeiſin doth lie againſt the diſſeiſor which doth rediſſeiſe, and againſt another to whom he made a feoffment after the ſecond diſſeiſin, for otherwiſe the rediſſeiſor might prevent the Plaintiff of his rediſſeiſin. But in an Aſſiſe againſt A. and B. A. is found Diſſeiſor, and B. Tenant, and the Plaintiff doth recover, and after he which was found Tenant diſſeiſes the Plaintiff, he ſhall not have a rediſſeiſin, becauſe he did diſſeiſe him but once.

F.N.B.188.G.

De eodem Tenemento, ſaith the Statute. If the Plaintiff be rediſſeiſed of parcel of the Tenement formerly recovered, he ſhall have a rediſſeiſin.

If the Demeſne recovereth a rent when it is a rent ſervice, and after the rent becometh a Rent Seck by ſurpluſage, and doth rediſſeiſe him of the rent, he ſhall have a rediſſeiſin, for the ſubſtance of the rent remains, though the quality be altered.

(s) 26.H.6. tit. Aid 77.

(s) If tenant in ſpecial tail recovereth in Aſſiſe, and after becometh Tenant in Tail after poſſibility of iſſue extinct, and then is rediſſeiſed, he ſhall have a rediſſeiſin. For albeit the ſtate of Inheritance be altered, yet the ſame Freehold remaineth.

8.E.3. tit. Rediſſeiſin 6. F.N.B.189.F.

If a man recover Land in an Aſſiſe of Novel diſſeiſin, whereunto there is a common appendant or appurtenant, and after is rediſſeiſed of the common, he ſhall have a rediſſeiſin of the common, for it was tacitly recovered in the Aſſiſe.

Sect. 234.

Æquivocum. For the better underſtanding hereof, of theſe there be two kinds, viz. Æquivocum Æquivocans; and Æquivocum Æquivocatum.

Æquivocum Æquivocans eſt plurivocum; Polyſemus, a word of divers ſeveral ſignifications.

Æquivocum Æquivocatum eſt univocum, that is to ſay, reduced to a certain ſignification, as here in Littletons example, Aſſiſa eſt nomen æquivocum æquivocans, for ſometime it ſignifieth a Jury, ſometime the Writ of Aſſiſe, and ſometime an Ordinance or Statute.

Now Aſſiſe, Jurata is Æquivocum Æquivocatum, and ſo is breve de Aſſiſa novæ diſſeiſinæ, and Aſſiſa panis, &c. even as Canis eſt nomen æ-

Et memorandum que ceſt noſme Aſſiſe, eſt nomen æquivocum, **car aſcun foits eſt pris pur un Jurie, car le commencement de le Record de Aſſiſe de novel diſſeiſin iſſint commencera:** Aſſiſa venit recognitura, &c. quod idem eſt quod Jurata venit recognitura, &c. **Et la cauſe eſt, pur ceo que per le briefe de Aſſiſe, il eſt command a la Vicont.**, Quod faceret

AND *memorandum* that this name Aſſiſe is *nomen Æquivocum*, for ſometimes it is taken for a Jury, for the beginning of the Record of an Aſſiſe of *Novel diſſeiſin* beginneth thus; *Aſſiſa venit recognitura, &c.* which is the ſame, as *Jurata venit recognitura.* And the reaſon is for that by the Writ of aſſiſe it is commanded to the Sheriff, *Quod faceret duodecim liberos & legales homi-*

duodecim

duodecim liberos & legales homines de vicineto, &c. videre tenementum illud, & nomina illorum imbreviare, & quod ſummoneat eos per bonos ſummonitores, quod ſint coram Juſticiariis, &c. parati inde facere recognitionem, &c. **Et pur ceo que per tiel original, un panel per force de meſme le briefe devoit eſtre returne, &c. il eſt dit en l' commencement del Record en le Aſſiſe,** Aſſiſa venit recognitura, &c. **Jury en briefe de droit il eſt communement dit, que le tenant luy poit mitter en Dieu & grand Aſſiſe, &c. Jury il y ad un briefe en le** Regiſter, **que eſt appel briefe** de Magna Aſſiſa eligenda. **Iſſint eſt ceo bien prove que ceſt noſme Aſſiſe,** aliquando ponitur pro Jurat'. **Et alcun foits il eſt priſe pur tout le briefe daſſiſe, & ſolonque cel entent il eſt pluis properment, & pluis communement priſe,** ſicome Aſſiſe de Novel diſſeiſin **eſt priſe pur tout l' briefe** de Aſſiſe de novel diſſeiſin. **Et en meſme le maner Aſſiſe de** *nes de vicineto, &c. videre tenementum illud, & nomina illorum imbreviare, & quod ſummoneat eos per bonos ſummonitores, quod ſint coram Juſticiariis, &c. parati inde facere recognitionem, &c.* And becauſe that by ſuch an original, a Pannel by force of the ſame writ ought to be returned, &c. it is ſaid in the beginning of the Record in the Aſſiſe, *Aſſiſa venit recognitura, &c.* Alſo in a writ of right it is commonly ſaid that the Tenant may put himſelf on God and the great Aſſiſe. Alſo there is a Writ in the Regiſter which is called a Writ, *De magna Aſſiſa eligenda:* So as this is well proved that this name Aſſiſe, ſometimes is taken for a Jury, and ſometimes it is taken for the whole writ of Aſſiſe, and according to this purpoſe it is moſt properly & moſt commonly taken, as an Aſſiſe of *Novel diſſeiſin* is taken for the whole writ of Aſſiſe of *Novel diſſeiſin.* And in the ſame manner an Aſſiſe of Common of Paſture is taken for the whole Writ of Aſſiſe

quivocum, Canis latrabilis, Canis marinus, Canis Cœleſtis ſunt æquivoca æquivocata.

¶ *Aſſiſe de novel diſſeiſin.* Note (a) there be four Aſſiſes, viz. this Writ, an Aſſiſe of Moredancester, of Darreine preſentment, and of Utrum. (a) Bracton l.4.fo.160. Britton c.42.f.105.134. F.N.B.Fleta lib.4.c.5. &c.Mirror c.2. Sect.13.

¶ *Vicount.* Vide Sect. 248. verbo *(Shireve.*

¶ *Quod faciat* 12 *liberos & legales homines de Vicineto, &c.* (b) Albeit the words of the Writ be duodecim, yet by ancient courſe the Sheriff muſt return 24. and this is for expedition of Juſtice, for if 12 ſhould only be returned, no man ſhould have a full Jury appear, or be ſworn in reſpect of challenges, without a Tales, which ſhould be a great delay of trials. So as in this caſe uſage & antient courſe maketh Law. And it ſeemeth to me, that the Law in this caſe delighteth her ſelf in the number of 12. for there muſt not only be 12 Jurors for the trial of matters of fact, (c) but 12 Judges of antient time for trial of matters in Law in the Exchequer Chamber. Alſo for matters of State there were in antient time twelve Counſellors of State. He that wageth his Law muſt have eleven others with him which think he ſaith true. And that number of twelve is much reſpected in Holy Writ, as 12 Apoſtles, 12 Stones, 12 Tribes, &c. (b) 1.H.7.2. (c) Vid. Pl. Com. in prooemio. Joſhua 4. Gen. 49.

(d) He that is of a Jury, muſt be liber homo, that is, not only a freeman, and not bond, but alſo one that hath ſuch freedom of mind as he ſtands indifferent as he ſtands unſworn. Secondly, he muſt be legalis. And by the Law every Juror that is returned for the trial of any iſſue or cauſe, ought to have three properties. (d) 9.E.4.16.

common de paſture eſt prꝛis pur tout le briefe daſſiſe de common de paſture, et aſſiſe de moꝛtdanceſter eſt prꝛiſe pur tout le bꝛe daſſiſe de Moꝛtdanceſter et Aſſiſe de Darraine prꝛeſentmẽt eſt prꝛiſe pur tout le brꝛeve daſſiſe de darraine prꝛeſentment. Mes il ſemble que le cauſe pur q̃ tiels briefes al commencemẽt furent appels Aſſiſes fuit pur ceo que p cheſcun tiel brꝛiefe il eſt commande al viſcont, Qd̃ ſummoneat xii. le quel eſt atant adit̃, que doit ſummoner un Jurie. Et aſcun foits Aſſiſe eſt prꝛiſe pur un oꝛdinance, ſ. pur mitter certaine choſes en certaine ruie & diſpoſition, ſicome oꝛdinance q̃ eſt appel Aſſiſa panis & cerviſiæ.

of Common of Paſture. And Aſſiſe of *Mortdanceſter*, is taken for the whole Writ of Aſſiſe of *Mortdanceſter*, and Aſſiſe of *Darreine preſentment*, is taken for the whole Writ of *Darreine preſentment*. But it ſeems that the reaſon why ſuch Writs at the beginning were called Aſſiſes, was for that by every ſuch Writ it is commanded to the Sheriff, *Quod ſummoneat* 12. which is as much to ſay, that he ought to ſummon a Jury. And ſometime Aſſiſe is taken for an Ordinance, to wit, to put certain things into a certain rule and diſpoſition, as an Ordinance which is called *Aſſiſa panis & cerviſiæ.*

(*) Artic. ſuper Cart. c. 9 Regiſt. 178. 8. E. 3. 30.

(*) Firſt, he ought to be dwelling moſt near to the place where the queſtion is moved.

Secondly, he ought to be moſt ſufficient both for underſtanding, and competency of eſtate.

Thirdly, he ought to be leaſt ſuſpicious, that is, to be indifferent as he ſtands unſworn, and then he is accounted in Law liber & legalis homo, otherwiſe he may be challenged if not ſuffered to be ſworn. The moſt uſual trial of matters of fact is by 12 ſuch men, for ad queſtionem facti non reſpondent Judices. And matters in Law the Judges ought to decide and diſcuſs, for Ad queſtionem juris non reſpondent Juratores.

Vide Sect. 102. 193.

9. H. 6. 37.

(e) Vid. Artic. ſup. Cart. c. 9. Forteſc. c. 25. &c. 29.

(e) For the inſtitution and right uſe of this trial by 12 men, and wherefore other Countries have them not, & how this trial excells others, ſee Forteſcue at large, cap. 25.

(f) Glanvil l. c. 14. 15 Bract. l. 3. fo. 116. a.

&c. 29 (f) And in antient time they were 12 Knights. This trial of the fact per duodecim liberos & legales homines is very antient, for hear what the Law was before the Conqueſt:

(g) Lamb. verb. Centuria

(g) In ſingulis Centuriis comitia ſunto, atque liberæ conditionis viri duodeni ætate ſuperiores unà cum præpoſito ſacra tenentes juranto, &c. May the trial in ſome caſes, Per medietatem linguæ, (as we ſpeak) was as antient,

(h) Lamb. fo. 91. 3.

(h) Viri duodeni jure conſulti, Angliæ ſex, Walliæ totidem, Anglis & Wallis jus dicunto, and of antient time it was called duodecim virale judicium.

Now ſeeing we are juſtly occaſioned, and the rather for the (&c.) herein to ſpeak of a challenge to Jurors, to make the ſtudious Reader capable of the underſtanding of the Books of Law concerning this matter, It ſhall be neceſſary to ſay ſomewhat of challenges, and firſt what a Challenge is.

Challenge is a word common as well to the Engliſh as to the French, and ſometime ſignifieth to claim, and the Latin word is vendicare, ſometime in reſpect of revenge to challenge into the field, and then it is called in Latin vindicare or provocare. Sometime in reſpect of partiality or inſufficiency, to challenge in Court perſons returned on a Jury. And ſeeing there is no proper Latin word to ſignifie this particular kind of challenge, they have framed a word antiently written (a) Chalumniare, and Columpniare, and Calumpniare, and now written Calumniare, and hath no affinity with the verb Calumnior, or Calumnia, which is derived of that, for that is of a quite other ſenſe, ſignifying a falſe accuſer, and in that ſenſe (b) Bracton uſeth Calumniator to be a falſe accuſer: but it is derived of the old word Caloir, or Chaloir, which in one ſignification is to care for, or foreſee. And for that to challenge Jurors is the mean to care for or foreſee, that an indifferent trial be had, it is called Calumniare, to challenge, that is to except againſt them that are returned to be Jurors, & this is his proper ſignification: (c) But ſometimes a Summons, Summonitio is ſaid (d) to be Calumniata, and a Count to be challenged,

(a) W. 2. cap. 32. Vide Stat. de 12. E. 2. de eſſon. calumniandis. Fleta l. 1. c. 32. Britton fo. 6. a. 12. a. 118 & 134. 12. Aſſ. 10.

(b) Bract. l. 3. fo. 137.

(c) Bract. l. 4. fo. 257. Vet. N. B. fo. 76.

longed, but this is improperly. And forasmuch as mens lives, fames, lands, and goods are to be tried by Jurors, it is moſt neceſſary that they be Omni exceptione majores, and therefore I will handle this matter the more largely.

A challenge to Jurors is twofold, either to the Array, or to the Polls: to the Array of the principal pannel, and to the array of the Tales. And herein you ſhall underſtand, that the Jurors names are ranked in the pannel one under another, which order or ranking the Jury is called the Array, and the verb to array the Jury, and ſo we ſay in common ſpeech, Bowl array, for the order of the Battel. And this array we call Arraiamentum, and to make the array, Arraiare, derived of the French word arroier, ſo as to challenge the array of the Pannel, is at once to challenge or except againſt all the perſons ſo arrayed or impanelled, in reſpect of the partiality or default of the Sheriff, Coroner, or other Officer that made the return.

And it is to be known that there is a principal cauſe of challenge to the Array, and a challenge to the favour principal, in reſpect of partiality, as firſt, if the Sheriff or other Officers be of (a) kindred or affinity to the plaintiff or defendant, if the affinity continue. (b) Secondly, if any one or more of the Jury be returned at the denomination of the party, Plaintiff or Defendant, the whole array ſhall be quaſhed. So it is if the Sheriff return any one, that he be more favourable to the one than to the other, all the array ſhall be quaſhed. (c) Thirdly, if the Plaintiff or Defendant have an Action of Battery againſt the Sheriff, or the Sheriff againſt either party, this is a good cauſe of challenge. So if the Plaintiff or Defendant have an action of debt againſt the Sheriff, but otherwiſe it is if the Sheriff have an action of debt againſt either party for if the Sheriff have parcel of the land depending upon the ſame title, (d) or if the Sheriff or his Bailiff which returned the Jury, be under the diſtreſs of either party, or if the Sheriff or his Bailiff be either of Counſel, Attorney, Officer in fee or of Robes, or ſervant of either party, Goſſip, or Arbitrator in the ſame matter, and treated thereof. (e) And where a ſubject may challenge the array for unindifferency, there the King being a party, may alſo challenge for the ſame cauſe, as for Kindred, or that he hath part of the Land, or the like: and where the array ſhall be challenged againſt the King, you ſhall read in our Books.

(f) By default of the Sheriff, as when the array of a Pannel is returned by a Bailiff of a Franchiſe, and the Sheriff return it as of himſelf, this ſhall be quaſhed, becauſe the party ſhould loſe his challenges. But if a Sheriff return a Jury within a Liberty, this is good, and the Lord of the Franchiſe is driven to his remedy againſt him

If a Peer of the Realm or Lord of Parliament be Demandant or Plaintiff, Tenant or Defendant, there muſt a Knight be returned of his Jury, be he Lord Spiritual or Temporal, or elſe the array may be quaſhed: but if he be returned, although he appear not, yet the Jury may be taken of the reſidue. And if others be joyned with the Lord of Parliament, yet if there be no Knight returned, the array ſhall be quaſhed againſt all. (h) So in an attaint there ought to be a Knight returned of the Jury.

(i) And when the King is party, as in travers of an Office, he that traverſeth may challenge the array, as hereafter in this Section ſhall appear: And ſo it is in caſe of life, and likewiſe the King may challenge the array, and this ſhall be tried by Triors according to the uſual courſe. (k) The array challenged on both ſides ſhall be quaſhed.

(l) And if two ſtrangers make a Pannel and not in favourable manner for the one party or the other, and the Sheriff returns the ſame, the array was challenged for this cauſe, and adjudged good.

(m) If the Bailiff of a Liberty return any out of his franchiſe, the array ſhall be quaſhed, as an array returned by one that hath no franchiſe ſhall be quaſhed.

Challenge to the array for favour: (n) He that raiſeth this, muſt ſhew in certain the name of him that made it, and in whoſe time, and all in certainty: This kind of Challenge being no principal challenge, muſt be left to the Diſcretion and Conſcience of the Triors, as if the Plaintiff or Defendant be Tenant to the Sheriff, this is no principal Challenge, for the Lord is in no danger of his Tenant, but è converſo it is a principal challenge, but in the other he may challenge for favour and leave it to trial. So affinity between the Son of the Sheriff, and the daughter of the party, or è converſo, or the like, is no principal challenge, but to the favour: but if the Sheriff marry the Daughter of either party, or è converſo, this (as hath been ſaid) is a principal challenge, or the like (o) But where the King is party, one ſhall not challenge the array for favour, &c. becauſe in reſpect of his allegiance he ought to favour the King more. But if the Sheriff be a Vadelet of the Crown, or other menial Servant of the King, there the challenge is good, and likewiſe the King may challenge the array for favour.

Note, upon that which hath been ſaid it appeareth, that the challenge to the array is in reſpect of the cauſe of unindifferency or default in the Sheriff or other Officer that made the return,

(a) 12.Aſſ.36.261 Aſſ.31.3.E.4 13. 31.Aſſ.7.29.Aſſ.2. 22.E.4.2.12.E.3. Chall.114.21.E.3.5.b. 3.H.7.5.Pl.Com.73. 15.H.7.9.7.E.6.Dier 78 12.H.6. Chall.159.

(b) 21.E.4.74.49.E.3.1 15.E.3.43.22.E.3.12. 9.E.4.46. 8.H.5.5. 28.Aſſ.22. 41.E.3. Chall. 99.

(c) 11.H.4.26.22.E.4.1 38.E.3.25. 38.H.6.6.

(d) 44.E.3.5. & 38. 44.Aſſ.23. 22.E.4.1. 3.H.6.39. 15.H.7.9.b. 27.Aſſ.28.7.H.7.10. 26.Aſſ.56.22.30.H.6.34 33.Aſſ.12.45.Aſſ.1. 9.Aſſ.8.8.2.23.7.F.3.56 21.H.7.38 2.H.4.13. 44.E.3.43.20.H.6.39. 44.Aſſ.18.3.H.6.24. 17.E.2.Chall.168. 4.E.4.11.

(e) 4.H.7.44.E.3.38. 38.Aſſ.19.22.E.4.Chall. 63.Stamf.162 c.

(f) 39.Aſſ.2. 17.E.3.50. 17.Aſſ.11. 30.Aſſ.5. 8.Aſſ.3.

(g) 13.E.3.Chall.115 Br. Enquiſt 100. 1.6.fo.54. Counteſs de Rutlands caſe, Pl.Com.117. 27.H.8.22. 4.E.Dier 208. 8.E.Dier 246.14.E.Dier 318. 10. E.Dier 265. b.

(h) 17.E.2. Atraint 69.

(i) 32.E.4.tit.Chall.63. 8 amſ.pl.cor.19.Aſ.6.b. 4.H.7.8. 44.E.3.38.

(k) 8.H.4 28.

(l) 6.R.2.Chall.102. 13.E.3. ibid. 108.

(m) 32.E.3.Chall.110.111. 32.Aſſ.6. 38.Aſſ 13.

(n) 34.H.6.Chall.69. 8.H.4.22. 27.Aſſ.20. 22.E.3.12.Vid.26.Aſ.21 38.H.6.9. 7.H.6.25. 19 H.6.48.20.H. 6. 38.

(o) 20.E.4.2.22.E.4.Cha.62 22.E.4.Chall.63. 4.H.7.8.

return, and not in respect of the persons returned, where there is no indifferency or default in the Sheriff, &c. for if the challenge to the Array be found against the party that takes it, yet he shall have his particular challenge to the Polls.

In some cases a challenge may be had to the Polls, and in some cases not at all. Challenge to the Polls is a challenge to the particular persons, and these be of four kinds, that is to say, Peremptory, Principal, which induce Favour, and for defaults of Hundredors.

(p) Peremptory, this is so called, because he may challenge peremptorily upon his own dislike, without shewing of any cause, and this only is in case of Treason or Felony, in favorem vitæ, and by the common Law the prisoner upon an Indictment or Appeal, might challenge thirty five, which was under the number of three Juries, but now by the Statute of 22. H. 8. the number is reduced to twenty in petit Treason, Murder, and Felony, and in case of high Treason, and misprision of high Treason it was taken away by the Statute of 33. H. 8. but now by the Statute of 1. & 2. Phil. & Mariæ, the Common Law is revived, touching Treason, the Prisoner shall have his challenge to the number of thirty five, and so it hath been resolved * by the Justices upon conference between them in the case of Sir Walter Rawleigh and George Brooks. But all this is to be understood when any Subject that is not a Peer of the Realm is arraigned for Treason or Felony: But if he be a Lord of Parliament, and a Peer of the Realm, and is to be tryed by his Peers, he shall not challenge any of his Peers at all, for they are not sworn as other Jurors be, but find the party guilty or not guilty upon their faith or allegiance to the King, and they are Judges of the fact, and every of them doth separately give his judgment, beginning at the lowest. But a Subject under the degree of Nobility may in case of Treason or Felony challenge for just cause as many as he can, as shall be said hereafter. In an Appeal of death against divers they plead not guilty, and one joynt Venire facias is awarded, if one challenge peremptorily, he shall be drawn against all. Otherwise it is of several Venire fac.

(p) 1.H.5.Chall.162. 9.H.5.7. 15.E.4.32. 24.H.7.7.19.Doct. & Stud.l.2.Fortescue c.27 3.H.7.2. 2.R.3.13. 32.H.6.36. 17.Ass.6. 37.H.6.8. 22.H.8.c.14. 33.H.8.tit.Chall.Br.217 33.H.8.c.23.1.& 2.P.& M.c.10. 23.H.6.26. 14.H.7.14.Stan.pl.Cor. 137. 138.

* Hil.1.Ja.R.

9.E.4.27.

Note that at the Common Law before the Statute of 33. E. 1. the King might have challenged peremptorily without shewing cause, but only that they were not good for the King, and without being limited to any number, but this was mischievous to the Subject, tending to infinite delays and danger. And therefore it is enacted, (q) Quod de cætero limites Domino Rege dicatur quod juratores, &c. non sunt boni pro Rege: non propter hoc remaneant inquisitiones, &c. sed assignent certam causam calumniæ suæ, &c. whereby the King is now restrained.

(q) 33.E.1.Ordinatio de Inquisitionibus.Stan.Pl.Cor.162.

Principal, so called because if it be found true, it standeth sufficient of it self without leaving any thing to the Conscience or Discretion of the Triors. Of a principal cause of challenge to the array, we have said somewhat already, now it followeth with like brevity to speak of principal Challenges to the Polls, (that is) severally to the persons returned.

Principal challenges to the Poll may be reduced to four heads: First, Propter honoris respectum, For respect of Honour: Secondly, Propter defectum, For want or default: Thirdly, Propter Affectum, For affection or partiality: Fourthly, Propter Delictum, For Crime or Delict.

Li.6.f.52.53.Countess de Rutlands case. 48.E.3.30. 48.Ass.6.35.H.6.46. 22.Ass.24.F.N.B.165. D.E.& 166.Regist.179.

First, Propter Honoris respectum, As any Peer of the Realm or Lord of Parliament, as a Baron, Viscount, Earl, Marquess, and Duke, for these in respect of Honour and Nobility, are not to be sworn on Juries, and if neither party will challenge him, he may challenge himself, for by Magna Charta it is provided, Quod nec super eum ibimus, nec super eum mittemus nisi per legale judicium parium suorum, aut per legem terræ. Now the Common Law hath divided all the Subjects into Lords of Parliament, and into the Commons of the Realm. The Peers of the Realm are divided into Barons, Viscounts, Earls, Marquesses, and Dukes: The Commons are divided into Knights, Esquires, Gentlemen, Citizens, Yeomen, and Burgesses, and in judgment of Law, any of the said degrees of Nobility are Peers to another. As if an Earl, Marquess, or Duke be to be tried for Treason or Felony, a Baron or any other degree of Nobility is his Peer. In like manner, a Knight, Esquire, &c. shall be tried Per pares, and that is by any of the Commons, as Gentlemen, Citizens, Yeomen, or Burgesses, so as when any of the Commons is to have a trial either at the Kings suit, or between party and party, a Peer of the Realm shall not be impanelled in any case.

(a) Lib.7.f.19 Calvins case Lib.10.fo.104. 14.H.4.19.b. (b)Bra.f.185.Bri.f.135. Flet.l.4.c.8.26.Ass.28. 3.H.6.39. 9.E.4.16.b. 21.H.6.20. 10.H.7.20. (c)Vi.Sect.464.38.Ass.19 17.Ass.15. 4.H.6.28. 9.H.5.5.10.H.6 7.8.18. 2.H.7.1. 10.H.7.14. 19.H.6.9. 7.H.6.25.40. 44. 12 E.4.13.3.H.4.4. (*) 9.H.6.Chall.27. 9.H.7.1.

Secondly, Propter Defectum.

1. Patriæ, (a) as Aliens born.

2. Libertatis, (b) as Villains or Bondmen, and so a Champion must be a Freeman.

3. Annui census, i. liberi tenementi. (c) First, what yearly freehold a Juror ought to have that passeth upon trial of the life of a man, or in a plea real, or in a plea personal where the debt or damage in the declaration amounteth to forty Marks, Vide Sect. 464. * Secondly, this freehold must be in his own right, in fee simple, fee tail, for term of his own life, or for another mans life, although it be upon condition, or in the right of his wife out of antient demesne, for freehold within antient demesne will not serve, but if the debt or damage amounteth

mounteth not to forty Marks, any Freehold ſufficeth. (d) Thirdly, he muſt have Freehold in that County where the cauſe of the Action ariſeth, and though he hath in another, it ſufficeth not. (e) Fourthly, if after his return he ſelleth away his Land, or if Ceſty que vie, or his wife dieth, or an entry be made for the condition broken, ſo as his freehold be determined, he may be challenged for inſufficiency of Freehold.

(d) 19.H.6.9.17.Aſſ.15.

(e) 12.H.7.4.21.H.6 38 7.H.4 1.

4. Hundredorum. Fifth, by the Common Law in a plea real, mixt, and perſonal, there ought to be four of the hundred (where the cauſe of Action ariſeth) returned for their better notice of the cauſe, for Vicini Vicinorum facta præſumuntur ſcire. And now ſince Littleton wrote, (f) in a plea perſonal if two Hundredors appear it ſufficeth, and in an Attaint, (g) although the Jury is double, yet the Hundredors are not double. Secondly, (h) if he hath either Freehold in the Hundred, though it be to the value but of half an acre, or if he dwell there, though he hath no Freehold in it, it ſufficeth. (i) Thirdly, if the cauſe of the Action riſeth in divers Hundreds, yet the number ſhall ſuffice, as if it had come out of one, and not ſeveral Hundredors out of each hundred. (k) Fourthly, if there be divers hundreds within one Leet or Rape, if he hath any Freehold, or dwelling in any of thoſe Hundreds, though not in the proper Hundred, it ſufficeth. (l) Fifthly, if the Jury come de Corpore comitatus, or de proximo hundredo, where the one party is Lord of the Hundred, or the like, there need no Hundredors be returned at all. (m) Sixthly, if a hundredor after he be returned, ſell away his Land within that Hundred, yet ſhall he not be challenged for the Hundred, for that this notice remains, otherwiſe as hath been ſaid for his inſufficiency of Freehold, for his fear to offend, and to have Lands waſted, &c. which is one of the reaſons of Law, is taken away. (n) Seventhly he that challengeth for the hundred, muſt ſhew in what hundred it is, and not drive the other party to ſhew it. Eighthly, his challenge for the hundred is not ſimpliciter, but ſecundum quid, for though it be found that he hath nothing in the Hundred, yet ſhall not he be drawn, but remain præter H. that is, beſides for the Hundred, and albeit he dwelleth or have Land in the hundred, yet muſt he have ſufficient Freehold.

(f) 27.Eliz.c.6.

(g) 7.H.4.47.

(h) 16.E.4.7.4.Mar.Br. Chall.216.21.E.4.74.75 9.H.6.66.

(i) 20.H.6.23.4.Ma.Br. Chall.216.

(k) 10.H.6.5.12.H.4.14 19 E.4.5.

(l) 37.H.6.11.25 E.3.43

(m) 21.H.6.38.12.H.7.4

(n) 7.Eliz.Dyer 231.

3. Propter affectum. And this is of two ſorts, either working a principal challenge, or to the favour. And again, a principal challenge is of two ſorts, either by judgment of Law without any Act of his, or by judgment of Law upon his own Act.

Bract. fo.185. Brit.fo.134.135. Fleta l.4.c.5. 21.E.4.11.12.

And it is ſaid that a principal challenge is, when there is expreſs favour or expreſs malice. Firſt, without any Act of his, as if the Juror be (a) of blood or kindred to either party, Conſanguineus, which is compounded ex Con & ſanguine, quaſi eodem ſanguine natus, as it were iſſued from the ſame blood, and this is a principal challenge, for that the Law preſumeth that one Kinſman doth favour another before a ſtranger, (b) and how far remote ſoever he is of kindred, yet the challenge is good. And if the Plaintiff challenge a Juror for kindred to the Defendant, it is no Counterplea to ſay that he is of kindred alſo to the Plaintiff, though he be in a neater degree. For the words of the Venire facias forbiddeth the Juror to be of kindred to either party.

(a) Bri. fo.135.

(b) Mirror c.3.de ordinance dartaint. Bracton } Britton } ubi ſupra. Fleta }

(c) If a body politick or incorporate, ſole or aggregate of many, bring any action that concerns their body politick or incorporate, if the Juror be of kindred to any that is of that body (although the body politick or incorporate can have no kindred) yet for that thoſe bodies conſiſt of natural perſons, it is a principal challenge. (d) A Baſtard cannot be of kindred to any, and therefore it can be no principal challenge. And here it is to be known that Affinis, Affinity, hath in Law two ſenſes. In his proper ſenſe it is taken for that nearneſs that is gotten by marriage, Cum duæ cognationes inter ſe diviſæ per nuptias copulantur & altera ad alterius fines accedit, & inde dicitur Affinis. In a larger ſence Affinitas is taken alſo for conſanguinity and kindred as in the writ of Venire facias and other where. (e) Affinity or Alliance by Marriage is a principal challenge, and equivalent to Conſanguinity when it is between either of the parties, as if the Plaintiff or Defendant marry the Daughter or Couſin of the Juror, or the Juror marry the Daughter or Couſin of the Plaintiff or Defendant, and the ſame continues or iſſue be had. But if the Son of the Juror hath married the daughter of the Plaintiff, this is no principal challenge, but to the favour, becauſe it is not between the parties. Much more may be ſaid hereof, ſed ſumma ſequor faſtigia rerum.

(c) 7.E.4.4. 17.E.4.7. 21.E.4.20. 28.H.6.10. 28.Aſſ.18. 34.Aſſ.6

(d) 41.E.3.Chal.99.41.E. 3.9.26.H.6.Chall.163.

(e) Mirror } Bracton } Britton } ubi ſupra. Fleta }

3.E.4.14. 21.E.3.5.41. 43.E.3.Chall.93.43.Aſſ. 25.26.22.E.4.2.14.H.7.2 15.H.7.9.

(f) If there be a challenge for Coſinage, he that taketh the challenge muſt ſhew how the Juror is Couſin. But yet if the Coſinage, that is the effect and ſubſtance be found, it ſufficeth, for the Law preferreth that which is material before that which is formal.

(f) 19.H.8.7. 28.H.8. Dier.37. 1. Mariæ Dier 91. 2.Eliz.ibid.177.

(g) If the Juror have part of the Land that dependeth upon the ſame Title.

(g) Bracton } Britton } Fleta } Mirror } ubi ſupra.

(h) If a Juror be within the hundred, Leet, or any way within the ſeigniory immediately or mediately, or any other diſtreſs of either party, this is a principal challenge. But if either party be within the diſtreſs of the Juror, this is no principal challenge, but to the favour.

(h) 9.H.6.tit.Chall.27. 38.E.3.25.22.E.4.Chal. 61. 4.H.6.25.3.H.6.39. 36.H.6.Chall.46.22.E.4 1 27.Aſſ.28. 22.E.3.Ba.

(i) If a witneſs named in the Deed be returned of the Jury it is a good cauſe of challenge of him. (k) So it is if one within age of one and twenty be returned, it is a good cauſe of challenge,

(i) 23.Aſſ.11.

(k) Mirror ubi ſupra.

2. (l) Upon his own Act, as if the Juror hath given a verdict before for the same cause, albeit it be reversed by writ of Error, or if after verdict, judgment were arrested. So if he hath given a former verdict upon the same title or matter, though between other persons. (m) But it is to be observed, that I may speak once for all, that in this or other like cases, he that taketh the Challenge must shew the Record if he will have it take place as a principal Challenge, otherwise he must conclude to the favour, unless it be a Record of the same Court, and then he must shew the day and term.

(n) So likewise one may be challenged, that he was indicter of the Plaintiff or Defendant either of Treason, Felony, Misprision, Trespass, or the like in the same cause.

(o) If the Juror be Godfather to the Child of the Plaintiff or Defendant, or è converso, this is allowed to be a good Challenge in our Books.

(p) If a Juror hath been an Arbitrator chosen by the Plaintiff or defendant in the same cause, and have been informed of, or treated of the matter, this is a principal challenge. Otherwise if he were neber informed or treated thereof, and otherwise if he were indifferently chosen by either of the parties, though he treated thereof. But a (q) Commissioner chosen by one of the parties for examination of witnesses in the same cause, is no principal cause of challenge, for he is made by the King under the great Seal, and not by the party as the Arbitrator is, but he may upon cause be challenged for favour.

(r) If he be of Counsel, Servant, or of Robes, or Fee, or of either party, it is a principal Challenge.

(s) If any after he be returned do eat and drink at the charge of either party, it is a principal cause of Challenge, otherwise it is of a Crier after he be sworn.

(t) Actions brought either by the Juror against either of the parties, or by either of the parties against him, which imply malice or displeasure, are causes of principal Challenge, unless they be brought by Covin either before or after the return, for if Covin be found, then it is no cause of Challenge; other Actions which do not imply malice or displeasure, are but to the favour.

(u) In a cause where the Parson of a Parish is partie, and the right of the Church cometh in debate, a Parishioner is a principal Challenge. Otherwise it is in debt, or any other Action where the right of the Church cometh not in question.

(w) If either party labour the Juror and give him any thing to give his verdict, this is a principal Challenge. But if either party labour the Juror to appear and to do his conscience, this is no Challenge at all, but lawful for him to do it.

(x) That the Juror is a fellow Servant with either party, is no principal challenge but to the favour.

(y) Neither of the parties can take that Challenge to the Polls, which he might have had to the Array.

(a) Note if the Defendant may have a principal cause of Challenge to the array, if the Sheriff return the Jury, the Plaintiff in that case may for his own expedition allege the same, and pray Process to the Coroners, which he cannot have, unless the Defendant will confess it, but if the Defendant will not confess it, then the Plaintiff shall have a venire facias to the Sheriff, and the Defendant shall never take any challenge for that cause, and so in like cases. But on the part of the Defendant any such matter shall not be alledged, and Process prayed to the Coroners, because he may challenge the Jury for that cause, and can be at no Prejudice.

(b) Challenge concluding to the favour when either party cannot take any principal Challenge, but he weth causes, of favour, which must be left to the conscience and discretion of the triers upon hearing their evidence to find him favourable or not favourable. But yet some of them come nearer to a principal Challenge then other. (c) As if the Juror be of kindred or under the distress of him in the reversion or remainder, or in whose right the Avowry or Justification is made, or the like: These be no principal Challenges, because he in Reversion, Remainder, or in whose right the Avowry or Justification is, is not party to the Record, otherwise it is if they were made parties by Aid, Receipt, or Voucher, and yet the cause of favour is apparent; so it is of all principal causes, if they were party to the Record. How the causes of favour are infinite, and thereof somewhat may be gathered of that which hath been said, and the rest I purposely leave the Reader to the reading of our Books concerning that matter. For all which the rule of the Law is, that he must stand indifferent as he stands unsworn.

(d) The subject may challenge the Polls, where the King is party. And if a man be outlawed of Treason or Felony, at the suit of the King, and the party for avoiding thereof alledgeth imprisonment, or the like, at the time of the Outlawry, though the issue be joined upon a collateral point, yet shall the party have such Challenges, as if he had been arraigned upon the crime it self, for this by a mean concerneth his life also.

(l) 8.H.5.10.33.H.6.1. 10.H.6.24. 7.H.4.11. 18.E.4.12. 21.E.4.74. 11.R.2.tit.Chall.106. 27.Ass.13.
(m) 43.E.3.Chall.93. 8.H.5.10.
(n) Mirror ubi sup. Brit. f.12.11.Ass.36.8.H.4 2. 7.E.4.4.12.Ass.36.19.21. c.40.Ass.10.25.E.3 c.3.
(o) 40.Ass.20.2.H.4.15 10.H.6.Chall.40.7.H.6. 40.19.H.6.66.4.E.4.11. 7.E.4.4.
(p) 20.H.6.39.9.E.4.46 35.H.6.19.H.6.3.H.6.24 7.H.7.10.
(q) Lib.9.fo.71.Peacocks case.
(r) Mirror, Bracton, Britton } ubi supra. 12.Ass.36. 26.Ass.56.28.Ass.19. 31.Ass.7.44.Ass.18.
(s) 13.H.4.13.11.R.2. Chall.164.
(t) Bract. Fleta } ubi sup.44 E.3.5.36. 44.Ass.23. 8.E.3 25. 43.E.3.31. 22.E.4.1 30.H.6.6.43.E.3.Chall. 63.11.H.4.26.11.H.6.15 32.F.3.Chall.189. 41.E.3.37. 39 Ass.2. 20.Ass.11.43. Ass. 46.
(u) 17.Ass.15.
(w) 8.E.3 39.20.H.6.39. 33 H.8.Dyer 48.
(x) 22.Eliz.Dyer 367.
Bracton, Britton, Fleta } ubi supra
(y) 49.E.3.1.
(a) 9.E.4.6.21.E.4.31. 22.F.4.3. 14.H.6.2. 20.E.4.9. 3.H.7.5. 22.Eliz.Dyer 367.
(b) Mirror c.3.dordinance dattiant. Bra.l.4. fol.185.Brit.fo.134.135 Fler.l.4.c.8.7.H.6.25.
(c) 9.H.7.3.10.H.7.20. 3.H.7.2.10.E.4.12.15.E. 4.10. 12. Ass.23.
(d) 6.R.2.Chall.141. 19.Ass.6.38.Ass.22.1. 3. 2.C all.165. 4.H.5. ibid.153.

¶ *Propter delictum.* (c) As if the Juror be attainted or condicted of treason, or felony, or for any offence to life or member, or in attaint for a false verdict, or for perjury as a witness, or in a conspiracy at the suit of the King, or in any suit (either for the King, or for any Subject) be adjudged to the Pillory, umbrel, or the like, or to be branded, or to be stigmatick, or to have any other corporal punishment whereby he becometh infamous (for it is a maxim in Law Repellitur à sacramento infamis) these and the like are principal causes of challenge. So it is if a man be outlawed in trespass, debt, or any other action, for he is Exlex, and therefore is not legalis homo. And old Books have said that if he be excommunicated, he could not be of a Jury.

(c) Mirror Bracton Britton Fleta } ubi supra 11.H.4.41.12.H.4.10. 33.H.6.21.

(f) See the Statute of W. 2, and Artic. supra cartas, what persons the Sheriff ought to return on Juries. And see F.N.B. breve de non ponendis in Assisis & juratis, and the Register in the same Writ. And see there what remedy the party hath that is returned against Law.

(f) W.2.c.38.Artic. super cart.c.9.F.N.B. 165. & 166.Regist.

It is necessary to be known the time when the challenge is to be taken. (g) First he that hath divers challenges must take them all at once, and the Law so requireth indifferent trials, as divers challenges are not accounted double. (h) Secondly, If one be challenged by one party, if after he be tried indifferent, it is time enough for the other party to challenge him. (i) Thirdly, after challenge to the Array, and trial duly returned, if the same party take a challenge to the polls, he must shew cause presently. (k) Fourthly, so if a Juror be formerly sworn, if he be challenged he must shew cause presently, and that cause must rise since he was sworn. (l) Fifthly, when the King is party or in an appeal of felony, the defendant that challengeth for cause, must shew his cause presently. Sixthly, If a man in case of treason or felony challenge for cause, and he be tried indifferent, yet he may challenge him peremptorily. Seventhly, a challenge for the Hundred must be taken before so many be sworn, as will serve for hundredors, or else he loseth the advantage thereof.

(g) 9.E.4.16.10.H.5.9: 37.H.6.8.3.H.6.38. Brooke tit.chall.8. 7.H.6.40. 14.H.7.5 6. (h) 9.E.4.16.27.H.3.a. (i) 43.E.3.Chall.93.20. E.3.ib.116.22.E.4.ibid. 61.7.H.4. 41.3. El. Dower 201. (k) 22.E.4.1.9. H.5.6. (l) 1.H.5.10.38.Ass.22.

8. (m) In a Writ of Right the grand Jury must be challenged before the four Knights before they be returned in Court, for after they be returned in Court, there cannot any challenge be taken unto them.

(m) 7.H.4.20.15.E.4.1.

9. Nota (n) The Array of the Tales shall not be challenged by any one party, until the Array of the principal be tried; but if the Plaintiff challenge the Array of the principal, the Defendant may challenge the Array of the Tales. After one hath taken a challenge to the poll, he cannot challenge the Array.

(n) 9.F.4.27.9.H.5.11. 34.Ass.6.13.E.3.Ch.10

Now it is to be seen how challenges to the Array of the principal Pannel, or of the Tales, or of the Polls shall be tried, and who shall be triers of the same, and to whom process shall be awarded.

1. (o) If the Plaintiff alledge a cause of challenge against the Sheriff, the process shall be directed to the Coroners, if any cause against any of the Coroners, process shall be awarded to the rest, if against all of them, then the Court shall appoint certain Elisors, or Eliors (so named ab eligendo) because they are named by the Court, against whose return no challenge shall be taken to the Array, because they were appointed by the Court, but he may have his challenge to the Polls. (p) Note, if process be once awarded for the partiality of the Sheriff, though there be a new Sheriff, yet process shall never be awarded to him; for the entry is, Ita quod vicecomes se non intromittat. But otherwise it is, for that he was tenant to either party, or the like.

(o) 18.E.4 8. (p) 15.H.7.9.14.H.7.32 18.E.4.3.

2. (q) If the Array be challenged in Court, it shall be tried by two of them that be impanelled to be appointed by the Court; for the triers in that case shall not exceed the number of two, unless it be by consent. But when the Court names two for some special cause alledged by either party, the Court may name others, if the Array be quashed, then process shall be awarded, ut supra.

(q) 29. Ass.3.19.H.6.48 21.H.6.Chal.38.33.H.6 21.4.E.4.17.43.E.3.Ch. 95.2.R.2.ib.101.34.Ass. 6.27.Ass.28.43 Ass.26.

(r) If a pannel upon a Venire facias be returned, and a Tales, and the Array of the principal is challenged, the triers, which try and quash the Array, shall not try the Array of the Tales; for now it is as if there had been no appearance of the principal pannel, but if the triers affirm the Array of the principal, then they shall try the Array of the Tales. If the Plaintiff challenge the Array of the principal, and the Defendant the array of the Tales, there the one of the principal; and the other of the Tales shall try both Arrays. For other matter concerning the Tales (s) see in my Reports matters worthy of observation. (t) When any challenge is made to the Polls, two triers shall be appointed by the Court, and if they try one indifferent, and he be sworn, then he and the two triers shall try another, and if another be tried indifferent, and he sworn, then the two triers cease, and the two that be sworn on the Jury shall try the rest. (u) If the Plaintiff challenge ten, and the defendant one, and the twelfth is sworn, because one cannot try alone, there shall be added to him one challenged by the Plaintiff, and the other by the Defendant. When the trial is to be had by two Counties, the manner of the trial is worthy of observation, and apparent in our (w) Books. (x) If the four Knights in the writ of right be challenged they shall try themselves, and they shall choose

(r) 9.E.4.46.19.H.6.48. 34.Ass.6.7.E.6. Dier.73 9.H.5.11. (s) Lib.10.fo. 104.105. Denbawds case. (t) 19 H.6.9. 22.E.4.6 Chal.61.62. (u) 7.H.4.41. (w) 11.H.4.61.48.E.3.30 11.H.4.63. (x) 22.E.3.18 39.E.3.2.

(y) 49 E.3.1.2.

the grand Aſſiſe, and try the challenges of the parties. (y) If the cauſe of challenge touch the diſhonour or diſcredit of the Juror, he ſhall not be examined upon his oath, but in other caſes he ſhall be examined upon his Oath to inform the triers. (z) If an Inqueſt be awarded by default the defendant hath loſt his challenge, but the Plaintiff may challenge for juſt cauſe, and that ſhall be examined and tried.

(z) 2.H.4.14. 4.E.4.3. 20.E.3.32. 22.Aſſ.28.31. 21.H.6.56.16.Aſſ.1. 5.E.5.35.36.

Wherefore the Plaintiff is to recover per viſum juratorum, there ought to be ſix of the Jury that have had the view, or known the Land in queſtion, ſo as he be able to put the Plaintiff in poſſeſſion if he recover.

In a Proprietate probanda, and a Writ to inquire for waſte, the parties have been received to take their challenges. (a) But paſſing over many things touching this matter, I will conclude with the ſaying of * Bracton, Plures autem aliæ ſunt cauſæ recuſandi juratores, de quibus ad præſens non recolo, ſed quæ jam enumeratæ ſunt, ſufficiant exempli cauſa. And ſo let us return to Littleton.

(a) 8.H.5.tit.Chall.167. 2.H.4.3. 34.E.3.Chall. 175.21.H.6.56.8.E.4.3. 16.E.4.1.

* Bract.l.4.fo.185.

¶ *De viſneto, &c.* It ſhould be Vicinero: Vicinetum is derived of the word Vicinus, and ſignifieth neighbourhood, or a place near at hand, or a neighbour place. And the reaſon wherefore the Jury muſt be of the neighbourhood, is for that Vicinus facta vicini præſumitur ſcire, all which is implied in this word (&c.)

¶ *Quod ſummoneat eos, &c.* Summoneo is compounded of Sub & moneo, & Euphoniæ gratia it is ſaid ſummoneo, to warn or ſummon, as in this caſe the Sheriff muſt warn or ſummon the Recognitors of the Aſſiſe to appear before the Juſtices of Aſſiſe, &c. And it is truly ſaid (b) that in this caſe Legitimam ſummonitionem recipere in propria perſona ubicunque inventus fuerit in comitatu in quo fuerit res petita, qui quidem ſi non inveniatur, ſufficit ſi ad domicilium fiat, dum tamen alicui de familia ſua manifeſte fuerit relata, &c.

(b) Bract l.5.fo.333. 334. Mirr.c.2. Sect. 19. Fleta l.6.c.6. Brit.c.121.

¶ *Per bonos ſummonitores.* Here two things are to be obſerved. Firſt, that the ſummoners muſt be Boni (id eſt) fide digni ut valeant legitimum teſtimonium perhibere, cum inde per Juſticiarios fuerint requiſiti. (c) And another ſaith, Fems, ne ſerfs, ne enfans, ne nul enfamys, ne nul que neſt fiſe tenant, ne poet eſte bone ſummoner. 2. It is ſpoken in the plural number, Per bonos ſummonitores, And therefore there muſt be two at the leaſt. Nec ſufficit quod ſummonitio fiat per unum tantum, &c. neceſſe eſt igitur quod per duos ad minus fiat, &c. There is alſo a ſummons of a Tenant in a real action, whereof, and of Pernors and Veiors you ſhall read (d) plentifully and plainly in our Books, whereunto being matter of courſe I refer you.

(c) Bracton, Britton, Fleta ubi ſupra. Bracton, Britton, Fleta, Mirror ubi ſupra.

(d) Regiſt.judicial.1.2. 107.43.E.3.32.24.E.3 35 3.E.3.48.50.E.3.16. 8.H.6.1.b. F.N.B.97.

Item ſummonitionum alia eſt Generalis, alia Specialis, whereof you ſhall find excellent matter in our (e) old Books, where you ſhall alſo read at large De Summonitione, Præſummonitione, & Reſummonitione.

(e) Mirror, Bracton, Britton, Fleta ubi ſupra.

¶ *Facere recognitionem.* Cognitio is knowledge, or knowledgment, or opinion, and recognition is a ſerious acknowledgment or opinion upon ſuch matters of fact as they ſhall have in charge, and thereupon the Jurors are called Recognitores aſſiſæ, Vide Sect. 233. Recognitio taken for the confeſſion of the Tenant.

¶ *Pannell,* is an Engliſh word, and ſignifieth a little part, for a Pane is a part, and a Pannel is a little part, as a Pannel of Wainſcot, a Pannel of a Saddle, and a Pannel of Parchment, wherein the Jurors names be written and annexed to the Writ. And a Jury is ſaid to be impanelled, when the Sheriff hath entred their names into the pannel, or little piece of Parchment in Pannello aſſiſæ.

Regiſter 225.

¶ *Briefe de droit.* Breve de recto, Writs of right be of two natures, 1. A Writ of Right, whereof Littleton here ſpeaketh, which is the higheſt Writ of all other real Writs whatſoever, and hath the greateſt reſpect, &c. and the moſt aſſured and final judgment, and therefore this Writ is called a Writ of Right right, and this in (f) old Books is called Dreit dreit, and this Writ Eſt darrein remedie de tours recoveries enter tours ordres des pleas, and the Jury in this Writ is called Magna aſſiſa, or magna Jurata, as Littleton here ſaith. 2. Writs of Right in their nature, as the Rationabili parte, and Ne injuſte vexes.

(f) Bracton l.5. fo. 372. Britton f.117. Fleta l.6. c.1. Glanvil.l.1.c.4.5. &c. l.2.c.7. l.12.c.1.

¶ *De Recto.* Rectum, is a proper and ſignificant word for the right that any hath, and wrong or injury is in French aptly called Tort, becauſe Injury and wrong is wreſted and crooked, being contrary to that which is right and ſtrait. Now the Law that is Linea recta eſt index ſui & obliqui. And Britton * ſaith, that Tort a la ley eſt contrarie, and as aptly for the cauſe aforeſaid is injury in Engliſh called wrong. And injuria is derived of In and jus, becauſe it is contrary to right, ſo as A faire tort is facere tortum, and Fleta ſaith, (g) Eſt autem jus publicum & privatum quod ex naturalibus præceptis aut gentium, aut civilibus eſt collectum, & quod in jure ſcripto jus appellatur, id in lege Angliæ rectum eſſe dicitur. And in the (h) Mirror, and other places of the Law it is called Droit, as Droit defend' the Law defendeth.

* Britton fo. 116. Fleta l.2.c.1.

(g) Fleta l.6. c.1.

(h) Mirror c.2.Sect.16. & cap.5. Sect.2.

¶ La

¶ *En le Register.* Register is a moſt antient Book of the Common Law, and it is twofold, viz. Regiſtrum brevium originalium, and Regiſtrum brevium judicialium. It is a French word, and ſignifieth a memorial of Writs. Sometimes the Regiſter of original Writs is called Regiſtrum cancellariæ, becauſe all original Writs do iſſue out of the Chancery, as Extra Officinam Juſtitiæ, for the antiquity and eſtimation of which Book, I refer the Reader to the Epiſtle before the tenth part of my Commentaries. 13.E.1.c.24. Pl.Com.228. b.

¶ *Magna aſſiſa eligenda,* Is a Judicial Writ to the Sheriff to return four lawful Knights before the Juſtices there upon their Oaths to return twelve Knights of the Vicinage to try the Aſſiſe in a Writ of Right.

¶ *Aſſiſe de common de paſture, &c.* Of what things an Aſſiſe of Novel diſſeiſin lay at the Common Law, and of what by the Statute, you may read at large in my (k) Reports in John Webs caſe, where the Authorities of Law are plentifully cited, and they and the Statute well explained: But ſince Littleton wrote, a man may have (l) an Aſſiſe of Novel diſſeiſin, Aſſiſe of Mordanc' or any Præcipe quod reddat, Quod ei deforceat, Writs of Dower, or other Writs original, as the caſe ſhall require of Tythes, Penſions, or other Eccleſiaſtical or Spiritual profit, if he be diſſeiſed, deforced, wronged, or otherwiſe kept, or put from the ſame, which by the Laws and Statutes of the Realm are made temporal or admitted to be or abide in temporal hands, ſo as by the ſaid act a lay-man having tythes or offerings, may either ſue for the ſubtraction or with-holding of the ſame in the Eccleſiaſtical Court, or at the Common Law at his election. And ſeeing no ſpecial Writ is given * by the Statute, the party muſt have a general Writ of Aſſiſe de libero tenemento, and make a ſpecial plaint. But his Præcipe muſt be, Quod reddat omnes & omnimodas decimas majores, mixtas, & minutas, infra Dale quoquo modo creſcen' contingen' ac annuatim renovan' or the like, according to his caſe. (m) But neither Aſſiſe nor any Præcipe did lie of them as of tythes or any other Eccleſiaſtical duty at the Common Law, for the Aſſiſe brought of the tenth part of all manner of Corn growing in an hundred Acres of Land after the tythes of the Parſon taken, was a Lay profit Apprender, and no Eccleſiaſtical duty. (k) Lib.8 fo.45. (l) 32.H.8.c.7. * 7.E.6 Dier 83.&c. (m) 44.E.3.5. Vid.Regiſt.165. Vid.le briefe de indicavit.W.2 c.5.Conjunctim feoffatis c. ultimo.

But tythes or other Eccleſiaſtical duties, that came to the Crown by the Statutes(n) of 27.H.8. 31 H.8. 37.H.8. and 1.E.6. are by thoſe Statutes, and this of 32.H.8. and of 1.and 2. Ph.& Mariæ, in the hands of Lay men temporal inheritances, and ſhall be accounted Aſſets, and husbands ſhall be Tenants by the curteſie, and wives endowed of them, and ſhall have other incidents belonging to temporal Inheritances, only this Eccleſiaſtical quality they have, that the owner or poſſeſſor thereof may ſue for the ſubtraction of the ſame in the Eccleſiaſtical Court. Bract.l.5.fo.402. Britton fo.200.Regiſt. fo.35.4 E.3.27.29. 16.E.3. Quar.Imp.147. Vid.2.H.3.tit.Grant.89 (n) 27.H.8.of Monaſteries not printed. 31.H.8.c.13.37.H.8.c.4 1.E.6.ca14.1.& 2.Ph.& Mar.c.8.2.E.3.c.13.

But by another(o) Statute, remedy is given as well to the Lay perſon, as to the Eccleſiaſtical perſon for ſubtraction of all manner of predial tythes, and he ſhall recover the treble value if they be not juſtly divided or ſet forth, and albeit the treble value be not expreſly given to the proprietary of the tythes, yet foraſmuch as he is the party grieved, and he hath the property and intereſt in the tythes, the treble value is given to him, and whenſoever a Statute giveth a forfeiture or penalty againſt him which wrongfully detaineth or diſpoſſeſſeth another of his duty or intereſt, in that caſe he that hath the wrong ſhall have the forfeiture or penalty, and ſhall have an action therefore upon the Statute at the common law, and the King ſhall not have the forfeiture in that caſe. And ſo it was (p) adjudged in the Exchequer upon Conference with other Judges in an information for the treble value for not ſetting out of tythes in Iclington in the County of Cambridge. And if the proprietary will ſue for ſuch ſubtraction of tythes in the Eccleſiaſtical Court, then he ſhall recover but the double value by the expreſs words of the Act. Wherein it is to be obſerved, that the Act of Parliament doth give a temporal remedy at the Common Law to Parſons and Vicars, and other Eccleſiaſtical perſons for an Eccleſiaſtical duty, and to Lay-men proprietaries of tythes the like remedy, but as it hath been ſaid they have election either to ſue for the treble value at the Common Law, or for the double value in the Eccleſiaſtical Court, or for ſubtraction of tythes there alſo. (o) 2 E.6.c.13. (p) Paſch.29.Eliz. between the Queen and Wood in the Exchequer and ſo it was reſolved by all the Judges upon conference, Mich.4.Ja. Regis.

¶ *Aſſiſe de Mordanceſter.* Aſſiſa mortis anteceſſoris. (q) This Writ a man may have after the decaſe of his immediate Anceſtor as where his Father, Mother, Brother, Siſter, Uncle or Aunt died ſeiſed of any Lands, and an eſtranger abate, &c. (q) Britton fo.178.179. &c. Bract.l.4. tractat.3.per totum, fo.252.&c. Mirror c.2.Sect.15. F.N.B.114.&c.

¶ *Aſſiſe de darreine preſentment.* Aſſiſa ultimæ præſentationis, whereof you ſhall read (r) plentifully in our Books. (r) Brit.c.90.fo.222. Bract.l.4.fo.238. Mirror ubi ſupra. F.N.B.195.Regiſt.or.30

To theſe may be added Aſſiſa utrum, or Juris utrum (ſ) which is the higheſt Writ a Parſon, Vicar, &c. can have for the recovering of the Glebe land, &c. in right of his Church. But it may be demanded wherefore theſe original Writs are called by the ſpecial name of Aſſiſes more then other original Writs, and here Littleton yieldeth the reaſon, becauſe that by theſe Writs it is commanded to the Sheriff Quod ſummoneat, which is as much to ſay, as to ſummon (ſ) Bract.fo.285.286. Brit.c.95.fo.234. Mirror ubi ſupra. F.N.B.48.49.

summon a Jury. So as in these cases there is a Jury returned the fifth day, and they are to appear as soon as the Defendant. And because by these Writs a Jury is to be returned, the Law calleth them Assises, Ab effectu, because an Assise (which in this sense signifieth a Jury) is to be returned. But besides the signification of the Writ * of Assise whereof Littleton here speaketh, it signifieth the whole proceeding upon the Writ.

* Mag. Chart. c. 12. And W. 2. c. 25.

In other original Writs regularly no Jury is to be returned before the appearance of the parties and an issue joyned between them, and therefore these other originals are not called Assises.

¶ *Pur un ordinance.* Here Assisa signifieth an ordinance, &c. Ordinance, Ordinatio is derived of the verb ordinare, To ordain or set in order. And note, an Act (r) of Parliament (as Littleton here proveth) is an Ordinance, for it sets down orders which are to be kept as Laws: and so is Ordinatio Forestæ, Ordinatio de Inquisitionibus, and Ordinatio contra Servientes, and other Statutes many times called Ordinances, and it is said almost in every Act of Parliament, Be it therefore ordained, &c. by Authority of this Parliament, or the like. But è converso, every Ordinance is not a Statute, as that of H. 6. cap. 29. for every Statute must be made by the King, with the assents of the Lords and Commons, and if it appear by the Act, that it was made by two of them only, it is no Statute.

(r) 19. H. 3. Juris utrum 16 39. E. 3. 1. 7. 42. E. 3. 38. 89. E. 3. 7. Regist. orig. 189. 33. E. 1. 5. R. 2. c. 2. Vid. l. 8. le Princes case.

The example put by Littleton, is Assisa panis & cervisiæ, (s) This Ordinance was made at a Parliament holden Anno 51. H. 3. and the like Ordinance was made, entituled Assisa cervisiæ, which you may see in old Magna Charta, fol. 57. b. (t) And so Assisa de Claredon, which was in 10. H. 2. and Assisa Forestæ, ordained in Anno 34. E. 1. and such like. And aptly an Ordinance of Parliament Antiquity hath called an Assise, for that an Act of Parliament doth ordain such a certain Order, as nothing can be done more or less by right. (u) And Fleta saith, Et habet Rex in potestate sua, ut leges & consuetudines & assisas in regno suo provisas & approbatas & juratas, &c. Where Assises are taken for Statutes, which are the assents of the Sessions of Parliament.

(s) Mir. c. 1 Sect. 13. & c. 4. de Articles de Eire. Bract. l. 3. fo. 136. (t) Stahf. f. 218. Mir. c. 2 Sect. 15. Hoveden 313. Regist. orig. 279.

(u) Flet. l. 1. c. 17.

De ponderibus & mensuris, of Weights and Measures is a most necessary learning to be known, and daily in use, but it belongeth not to this Treatise. In some other (if God so please) somewhat shall be said of them.

Sect. 235.

¶ *Et le tenant attorna.* Here it appeareth that an Attornment, (that is, an Agreement to the Grant) is no seisin of the rent.

¶ *Il ne ad ascun remedie, &c.* which is as much to say, as he hath not any remedy either at the Common Law, or in any Court of equity, which is worthy of observation.

See more of this in the Chapter of Attornment. Sect. 565.

¶ *Voile doner al grantee un denier, ou un maile, &c. en noſme de ſeiſin de rent, &c.* Here it is to be observed, that payment of any money in name of seisin of the rent, before any rent becomes due, is a good seisin of the rent to have an Assise when it is due, and that which is given in the name of seisin of the rent, worketh his

¶ Item ſi ſoit ſeignior & Tenant, & le Seignior granta le rent ſon tenant per ſon fait a un auter, ſavant a luy les ſerbices, & l'Tenant atturna, ceo eſt un Rent Secke, come eſt dit adevant. Mes ſi l'rent a luy ſoit denie al prochein iour de payment, il ny ad aſcun remedie, pur ceo q̄ il navoit de ceo aſcun poſſeſſiō. Mes ſi le Tenant quaunt il atturna al grantee, ou apres, voile doner al grantee un denier, ou un maile, &c. en

ALſo if there be Lord and tenant and the lord granteth the rent of his Tenant by Deed to another, saving to him the other services, and the Tenant atturneth, that is a Rent seck, as it is aforesaid. But if the rent be denied him at the next day of payment, he hath no remedy, because that he had not thereof any possession. But if the tenant when he atturneth to the Grantee, or afterwards, will give a peny or a halfpeny to the grantee in

noſme

noſme de ſeiſin de le rent, donques ſi apres a le prochein iour de payment le rent a luy ſoit denie, il aver Aſſiſe de Novel Diſſeiſin. Et iſſint eſt lou hõe grãta per ſon fait un annual rent iſſuant hors de ſa terre a un auter, &c. ſi le Grantor adonques ou apres paya al Grantee un denier, ou un maile en noſme de ſeiſin de le rent, donques ſi apres al prochein iour de payment le rent ſoit denie, le Grantee poet aver aſſiſe, ou autrement nemy, &c.

name of ſeiſin of rent, then if after at the next day of payment the Rent be denied him, he ſhall have an Aſſiſe of *Novel Diſſeiſin*. And ſo it is if a man grant by his Deed a yearly Rent, iſſuing out of his Land, to another, &c. if the Grantor then after pay to the Grantee a penny or an half-penny in name of Seiſin of the Rent, then if after the next day of payment the Rent be denied, the Grantee may have an Aſſiſe, or elſe not, &c.

effect to give ſeiſin, and yet is no part of the Rent, nor ſhall be abated out of the Rent: but you ſhall read more hereof hereafter, Sect. 565.

¶ *Un denier, ou un maile, &c.* Here by this (&c.) is implied, that ſo it is of the gift of a Sheep, or an Ore, or a King, or a pair of Globes, or a pound of Pepper, or of any valuable thing.

¶ *Iſſint ſi home grãt per ſon fait un annual rent iſſuant hors de ſon terre a un auter, &c.* By this (&c) is implied, that the grant and delivery of the Deed is no ſeiſin of the Rent: and that a ſeiſin in Law which the Grantee hath by the grant, is not ſufficient to maintain an Aſſiſe, or any other real Action, but there muſt be an actual Seiſin.

Sect. 236.

¶ Item de Rent ſeck, home poit aver Aſſiſe de Mortdanceſter, ou Briefe de Ayel, ou de Coſinage, e touts autres manners dactions reals, come la caſe giſt, ſicome il poit aver daſcun aut rent.

ALſo of Rent ſeck a man may have an Aſſiſe of *Mortdauncester*, or a Writ of *Ayel* or *Coſinage*, and all other manner of Actions reals, as the caſe lieth, as he may have of any other Rent.

¶ *Briefe de Ayel.* Breve de Avo. This Writ lieth where the Grandfather or Grandmother was ſeiſed of any Land in fee the day that he died, and an ſtranger abate, the heir ſhall have this Writ. (w) And if the great Grandfather, Beſaiel, Proavus, or great Grandmother, Beſaiels, Proavia, be ſeiſed, as is aforeſaid, and die, &c. the heir ſhall have a Writ De Beſaiel, proavo, or de Beſaiels, proavia, &c.

Bra. l. 2. fo. 67. Bri. c. 89. & c. 76. Fl. l. 5. c. 7. 8. & 6. F. N. B. 221.

(w) 6. E. 3. 24 7. E. 3. 46. Regiſt. 226. F. N. B. 221. a. b. Britton c. 76.

¶ *Briefe de Coſinage.* Breve de Conſanguinitate. (a) This Writ lieth where the great Grandfathers father, Tritavus (id eſt) tertius avus, or abavus, (id eſt) avus avi was ſeiſed as is aforeſaid, or where grandfathers or grandmothers mother, &c. ut ſupra. And ſo it is if the ſeiſin of the brother of the grandfathers grandfather, &c.

(a) Bra. l. 2. fo. 67. Brit. c. 8. 9. & c. 76. Fl. l. 5. c. 7. 8. F. N. B. 221.

¶ *Rent Secke.* And ſo it is of a Rent charge to all reſpects.

¶ *Et touts autres manners dactions reals.* Hereupon ſome have gathered, that a man ſhall have a Writ of Right of a Rent ſeck, or of a Rent charge, albeit they be againſt common right. But that which hath been ſaid by Littleton of an Aſſiſe of Mortdauncester, a Writ of Ayel, Coſinage, and other Actions reals, is to be underſtood after Seiſin had by ſome of the Anceſtors of the Demandant, for without an actual Seiſin, or a Seiſin in Deed, none of theſe are maintainable,

15. E. 2. Hors de ſon fee 27. 3. E. 3. 35. 4. E. 3. dro. 31. F. N. B. 6. 14. E 4. 5. Diverſity des Courts 117 33 E. 3. Judgm. 252.

ſeiſed,

Sect. 237.

¶ *Rescous.* Rescussus is here described by Littleton: It is an antient French word coming from Rescourrer (id est) Recuperare, that is, to take from, to rescue, or recover. Rescous is a taking away, and setting at liberty against Law a distress taken, or a person arrested by the process or course of Law. And all is one, as to the point of the Disseisin to rescue the distress after it is taken, and beforehand to resist and withstand the taking of it, but yet it is no Rescous until it be distrained: And therefore you may make six Disseisins of a Rent service: Rescous of a distress, resistance to distrain, Replevin, Inclosure, Counterpleading of the title, and vouching of a Record, and failing. If the Tenant rescue the distress, and after is disseised of the Tenancy, yet the Assise lieth against him, for the disseisin done of the Rent by the Rescous.

18.E.3.3.44.E.3.20.b. 20.H.7.1.2.21.H.7.40 a F.N.B.102.b. 6.H.6. Disseis.9. 4.E.2. Ass.43.8.E.1. ibid.416. W.2.c.6,12.H.7. Kelway 20.

¶ *Pur son Rent arere.* Here Littleton decideth an antient question in our Books, (p) viz. That the Rent must be behind, or else the Tenant may make Rescous: for if no rent be behind when the Distress is taken, how can the Rescous amount to a disseisin of the rent when none is due? And so it is, if the Tenant resist the Lord to distrain, when there is no rent behind, this can be no disseisin of the rent for the cause abovesaid, and this (as it appeareth by Littleton) holdeth as well in case of a rent service between Lord and Tenant, as in case of a Rent charge, &c. And so I heard Sir Christopher Wray Chief Justice say, that he had adjudged it: And that which the Tenant may do when there is no rent behind, may a stranger do, if his Beasts be distrained. If the Tenant tender the rent to the Lord when he is to take the distress, if notwithstanding the Lord will distrain, the Tenant may make rescous. If the rent of the Lord be behind, and the Lord distrain the Cattel of the Tenant in the high way within his fee, the Tenant may make Rescous

p) 6.R.2.Rescous 10.40. E.8.33.31.E.3.Rescous 17. 22.H.6.2.b. 6.E.4. 21.b.7.E.4.20. 5.E.4.8. 34.H.6.47.F.N.B.102.E 2.H.4.21.16.4.E.6 Distress Br.24. 39.E.3.35. 39.H.6.7.Lib 4.fo.11. Revils case 8.H.4.1.

7 E.4.24.

17.E.3.43. Vid.tit.Rescous 14.

¶ Item, sont trois causes de disseisin de Rent Service, s̄, Rescous, Replevin, & Enclosure: Rescous est, quaunt le Seignior en la terre tenus de luy distreine p̄ s̄ rent arere si le distress de luy soit rescous: ou si le seignior vient sur la terre, & voile distreyner, & le Tenant ou auter hōe ne luy voile suffer, &c. Replevin est, quant le Seignior ad distreine, & Replevin soit fait de le distress per Bziefe, ou per Plaint. Enclosur est, si les Terres ou les Tenements sont illint enclosés, que le Seignior ne poit bener deins les Tres ou Tenements pur distreyn̄. Et la cause pur que tiels choses illint faits sont disseisins al Seignior, est, pur ceo que per tiels choses le Seignior est disturbe de le mean per que il doit avoire & bener a son rent, s̄, de le distress.

ALso there be three causes of Disseisin of Rent Service, that is to say, Rescous, Replevin, and Enclosure: Rescous is when the Lord distraineth in the Land holden of him for his Rent behind, if the distress be rescued from him, or the Lord come upon the Land, and will distrain, and the Tenant or another man wil not suffer him, &c. Replevin is, when the Lord hath distrained, and Replevin is made of the distress by Writ or by Plaint. Enclosure is, if the Lands and Tenements be so enclosed, that the Lord may not come within the Lands and Tenements for to distrain. And the cause why such things so done be Disseisins made to the Lord, is for this, that by such things the Lord is disturbed of the mean by which he ought to have come to his rent, s. of the distress.

scous, for that it is defended by Law to distrain in the high way. And by the same reason if the Lord will distrain averia carucæ, where there is a sufficient distress to be taken besides, or if the Lord distrain any thing that is not distrainable either by the Common Law, or by any Statute, the Tenant may make rescous.

Note, there is a Rescous in Deed and a rescous in Law: of a rescous in Deed somewhat hath already been spoken. A Rescous in Law is when a man hath taken a distress, and the Cattel distrained as he is driving of them to the Pound go into the House of the Owner, if he that took the distress demand them of the Owner, and he deliver them not, this is a rescous in Law, and so of the like. 3. E. 3. Rescous 12.

And every word of Littleton is material, for he saith;

¶ *En la terre tenus de luy.* And therefore if the Lord distrain out of his fee in Lands not holden of him, the Tenant may make rescous, unless it be in some special Cases.

If the Lord come to distrain Cattel which he seeth then within his fee, and the Tenant or any other to prevent the Lord to distrain, drive the Cattel out of the fee of the Lord into some place out of his fee, per may the Lord freshly follow, and distrain the Cattel, and the Tenant cannot make rescous, albeit the place wherein the distress is taken, is out of his fee, for now in judgment of Law the distress is taken within his fee, and so shall the Writ of rescous suppose. 44. E. 3. 20. 6 R. 2. Rescous 11. 11. H. 7. 4. 21. H. 7. 40. 34. H. 6 18. 16. E 4. 10. 9. fo. 22. in case de avowry.

But if the Lord coming to distrain had no view of the Cattel within his fee, though the Tenant drive them off purposely, or if the Cattel of themselves after the view go out of the fee, or if the Tenant after the view remove them for any other cause, then to prevent the Lord of his distress, then cannot the Lord distrain them out of his fee, and if he doth, the Tenant may make rescous.

If a man come to distrain for Damage Feasant, and see the Beasts in his soil, and the Owner chase them out of purpose before the distress be taken, the Owner of the soil cannot distrain them, and if he doth, the owner of the Cattel may rescue them, for the Beasts must be Damage Feasant at the time of the distress, and so note a diversity. 16. E. 4. 10. 9. E 2. avow. 182. l. 9. ubi supra.

There is a diversity (a) between a Warrant of Record, and a Warrant, or an Authority in Law, for if a Capias be awarded to the Sheriff to arrest a man for Felony, albeit the party be innocent, yet cannot he make rescous. But if a Sheriff will by Authority which the Law giveth him, arrest any man for felony which is not guilty, he may rescue himself. (a) 14. H. 7. 20. tit. Just. de Peace 9.

¶ *Replevin,* (b) Is described of Replegiare to redeliver to the owner upon pledges or surety. (b) Brit. f. 108. Flet. l. 4. c. 1. Mirror c. 2. Sect. 15.

(c) Also to counterplead the Plaintiff in an Assise by which he is delayed, maketh him that pleadeth it a disseisor. Otherwise it is, if he had pleaded Nul tort, &c. (c) 24. Ass. 3. 29. Ass. 52. Fleta l. 4. c. 1. Britton fo. 108.

¶ *Encloser,* Is here also described, and need no other explication, for the Lord cannot (d) break open the gates, or break down the Inclosures to take a distress, and therefore the Law accounts it a disseisin. But all these are intended by Littleton to be disseisins after an actual seisin had, and when the Rent is behind, otherwise none of these are disseisins at all. (d) 10. E. 3. 9. 49. E. 3. 14. 7. E. 3. 3. 11. H. 7. 28. 8. Ass. 18. 10. E. 4. 2.

But wherefore should a Rescous of the distress by the party himself, or a Replevin which is a redelivery of the distress by the Sheriff by the course of Law to the party be any disseisin of the Rent Service? Littleton doth here yield the true reason, because that by the rescue, and by the suing of the Replevin, the Lord is disturbed of the mean by the which he ought to have and come to his rent, viz. of the distress. Bract. l. 4. fo. 161. 204. Brit. fo. 108. Fleta l. 4. c. 1.

And so it is of an Incloser, for he that disturbs a man of the mean disseiseth him of the thing it self. (e) As the turning of the whole stream that runs to a Mill is a disseisin of the Mill it self. (e) 9. Ass. 19. Mirror c. 2. Sect. 15. Brit. f. 108. 114. 118. 141.

So it is if a man be disturbed to enter and manure his Land, (f) this is a disseisin of the Land it self: for Qui adimit medium dirimit finem. And Qui obstruit aditum destruit commodum. (g) And therefore where it is said that a man shall not be punished for suing of Writs in the Kings Court, be it of right or wrong, it is regularly true, but it faileth in this special case of the Writ of replevy for the cause aforesaid. (h) But Denier is no disseisin of a Rent service without rescous or resistance. (f) 16. Ass. 17. 3. E. 4. 2. per Littl. 49. E. 3. 14. b. (g) F. N. B. 42. g. 22. E. 3. 15. 43. Ass. 40. 43. E. 3. 20. faux judg. 10. 8. E. 4. 15. per Moyle. 2 R. 2. 19. (h) 3. E. 3. 75 8. H. 6. 11.

Sect. 238.

Britton ubi ſupra. Fleta l. 4. c. 1.

¶ *Sont 4. cauſes de diſſeiſin de Rent Charge.* And you may adde a fifth, viz. Reſiſtance to Diſtrain, Counterpleading and Vouching a Record and failer thereof, as hath been ſaid before.

¶ ET ſont 4. cauſes de diſſeiſin de rent charge, ſcilicet, Reſcous, Replevin, Encloſure, & Denier, car Denier eſt un diſſeiſin de Rent charge, come eſt avantdit de rent Seck.

AND there be four cauſes of diſſeiſin of a Rent Charge, *ſcil.* Reſcous, Replevin, Incloſure, and Denial. For Denial is a diſſeiſin of a Rent Charge, as is ſaid before of a Rent Seck.

14.E.4.4. 35.H.6.7.3. al.8.10.E.3.9.40.E.3.24 3.H.6.35. 3.E.3.75.29. Aſſ.51.39.Aſſ.4.40.Al.3 13.E.1.Aſſ.404.3.Aſſ.8. 8.H.6.11.18.E.3.Aſſ.78

¶ *Denier.* Denial is a diſſeiſin of a Rent charge, as well as of a Rent ſeck, albeit he may diſtrain for the Rent charge, as well as for a Rent Service. Nota, or Seck is a Diſſeiſin, it muſt be intended upon a demand made. That when Books ſay that a detainer of a Rent charge,

If there be two Joyntenants, and the grantee of a Rent charge diſtrain for the Rent, and one of them make Reſcous, they are both diſſeiſors, for a diſtreſs for the rent is a demand in Law, and then the Non-payment is a denial and a diſſeiſin, but he that made the Reſcous is only the Diſſeiſor with force.

Sect. 239.

49.E.3.15.29.Aſſ.5. 36.Aſſ.7.10.E.3.19. 33.H.6.35. 35.H.6.7.b.

¶ The reaſon wherefore incloſure is a diſſeiſin of a Rent Seck is becauſe the Grantee cannot come upon the land to demand it.

¶ ET deux ſont cauſes de diſſeiſin de Rent Seck, ceſtaſcavoir, Denier & encloſure.

AND there be two cauſes of diſſeiſin of a Rent Seck, that is to ſay, denial and incloſure.

Sect. 240.

(*) Fleta l. 1. c. 42. 49.E.3.14.49.Aſſ.5. 23.Aſſ.49.

¶ *Forſtalla.* (*) Foreſtellamentum, ſignifieth Obtuſionem viæ vel impedimentum tranſitus, &c.

¶ *One force & armes.* Vi & armis.

(i) Vide Sect 431.

Force, vis in (i) the Common Law is moſt commonly taken in ill part, and taken for unlawful violence, for Maxime paci ſunt contraria vis & injuria. And therefore Britton ſaid well, ſpeaking in the perſon of the King, Nous volons que touts gents pluis uſeant judgement que force. Arma. Arms in the Common law ſignifieth any thing that a man ſtriketh or hurteth

¶ ET il ſemble que il y ad un auter cauſe de diſſeiſin de touts les trois ſervices avantdits, ceſtaſcavoir, ſi le ſeignior ſoit en alant a la terre tenus de luy pur diſtreyner pur le Rent arere, & le Tenant ceo oyant, luy encounter, & luy forſtala la voy ouesque force & armes, ou luy manace en tiel forme que il ne oſaſt

AND it ſeemeth that there is another cauſe of diſſeiſin of all the three ſervices aforeſaid, that is, if the Lord is going to the Land holden of him for to diſtrain for the Rent behind, and the Tenant hearing this, encountreth with him, foreſtalleth him the way with force and arms, or menaceth him in ſuch form, that

tener

vener a ſa terre pur diſtreiner p̄ ſon rent arere pur doubt de mozt, ou mutilation de ſes members, ceo eſt un diſſeiſin, pur ceo que le Seignioz eſt diſturbe de le meane, per que il doit vener a ſon rent. Et iſſint eſt ſi p̄ tiel foꝛſtalment ou menace, celuy que ad un rent charge ou rent ſecke eſt foꝛſtalle, ou ne eſt vener a la terre a demaunder le rent arere, &c.

he dare not come to the Land to diſtrain for his Rent behind, for doubt of Death, or bodily hurt, this is a diſſeiſin, for that that the Lord is diſturbed of the mean whereby he ought to come to his Rent. And ſo it is if by ſuch foreſtalling or menacing, he that hath Rent charge or Rent ſeck is foreſtalled, or dare not come to the Land to ask the rent behind, &c.

withal; (k) Omnes illos dicimus armatos qui habent cum quo nocere poſſunt. Telorum autem appellatione omnia iſti quibus ſinguli homines nocere poſſunt accipiuntur. Sed ſi quis venerit ſine armis & ipſa concertatione ligna ſumpſerit, fuſtes & lapides, talis dicetur vis armata, ſed ſi quis venerit cum armis, armis tamen ad dejiciendum non uſus fuerit, & dejecerit, vis armata dicitur eſſe facta, ſufficit enim terror armorum ut videatur armis dejeciſſe. And Armorum quædam ſunt tuitionis (& quod quis ob tutelam corporis ſui vel ſui juris fecerit, juſte feciſſe videtur) quædam pacis & Juſtitiæ, quædam perturbationis pacis & injuriæ, quædam uſurpationis rei alienæ.

(k) Bract. l.4.fo.152. & l.3.fo.144. Fleta l.4. c.4.

Again, Armorum quædam ſunt moluta, & quædam quæ faciunt Bruſuram, &c. Arma moluta plagam faciunt, ſicut gladius, biſacuta, & hujuſmodi, ligna verò & lapides Bruſuras, orbes, & ictus, &c. To conclude this, it is truly ſaid, that Armorum appellatione non ſolum ſcuta & gladii & galeæ continentur, ſed & fuſtes, & lapides, as the Poet ſaith.

Jamque faces & ſaxa volant, furor arma miniſtrat. Virgil 1. Æneid.

Sed vim vi repellere licet, modo fiat moderamine inculpatæ tutelæ, non ad ſumendam vindictam, ſed ad propulſandam injuriam.

¶ ***Pur doubt de mort & mutilation de ſes members.*** For it muſt not be Vagus & vanus timor, ſed talis qui cadere poſſit in virum conſtantem, & non in hominem vanum & meticuloſum, talis enim debet eſſe metus qui in ſe continet mortis periculum & corporis cruciatum. Littleton here ſaith it muſt be for fear of death, * or mutilation of members, Eu nemo tenetur exponere ſe infortuniis & periculis. And therefore a foreſtalment with ſuch a menace is a diſſeiſin; not only (ſaith Littleton) of a Rent ſervice, but alſo of a Rent charge and Rent ſeck. Theſe be all the diſſeiſins of a Rent that our Author ſpeaks of. See hereafter (l) where a diſſeiſin ſhall be by way of admittance of the owner of the Rent. And Littleton doth adde the binding reaſon in caſe of foreſtalment, becauſe the Lord is diſturbed of the mean by which he ought to come to his Rent, whereof there hath been ſpoken ſufficient before, as well in caſe of the Rent charge and Rent ſeck, as of the Rent ſervice.

Bract. l.2.c.16. Britt. fo.19 & 88. Flet. l.3. c.7.

* See of this in the Chapter of Deſcents. 49.E.3.14. 49.Aſſ.5. 29.Aſſ.49.&c.

(l) Vide 3.ſect.589.

¶ ***&c.*** Of the (&c.) in the end of this Section, and what is implyed therein, ſufficient hath been ſpoken before.

Now hath Littleton ſpoken of remedies for the recovery of the arrearages of rents. But ſince Littletons time a right profitable Statute* in the 32. year of H.8. hath been made for the recovery of arrearages of rents in certain caſes where there lay no remedy at the Common Law, and giveth further remedy in ſome caſes where at the Common Law there was ſome remedy, which Statute hath been well and beneficially expounded, and hereupon right things are to be obſerved. Firſt, when Littleton wrote, the Heirs, Executors or Adminiſtrators of a man ſeiſed of a Rent ſervice, Rent charge, Rent ſeck, or Fee farm in fee ſimple or fee tail had no remedy for the arrearages incurred in the life of the owner of ſuch rents: But now a double remedy is given to the Executors or Adminiſtrators for payment of debts, viz. either to diſtrain, or to have an action of debt.

* 32.H.8.cap.37.

Lib. 4.fo.49.50.2. Ognells caſe 40.E.3.Execution 58. 45.E.3.ib.7. 9.H.6.43. 14.H.8.20. 19.H.6.43. 34 H. 6.20. 32.E.3.Det.9.9.H.7 17 19.E.3. Juriſdiction 28.

2. That the Preamble of the Statute concerning executors or adminiſtrators of tenant for life is to be intended of Tenant pur auter vie, ſo long as ceſtuy que vie liveth, who are alſo holpen by the ſaid double remedy: but after the eſtate for life determined, the Executors or adminiſtrators might have had an action of debt by the Common Law, but they could not have

distrained, which now they may do by force of this Statute, for in that point it addeth (m) an other remedy, then the Common Law gave.

(m) 23. Eliz. Dier 375.

3. If a man make a Lease for life, or lives, or a gift in tail reserving a Rent, this is a Rent service within this Statute.

4. The distress is the more plain and certain remedy, then the action of Debt, for the action of debt must be brought against them that took the profits when the rent became behind, or against their Executors or Administrators; but the distress may be taken upon the land, be it either in the Tenants own hands or in the hands of any other that claims by or from him, (that is by interpretation under him) by purchase, gift, or descent, and these words, Claiming, only by and from him, are to be understood claiming only from or under him by purchase, gift, or descent, and not paramount or above him, as the Lord by escheat claimeth not under the tenant by purchase, gift, or descent, but by reason of his Seigniory which is a title paramount.

26. E. 3. 64. 11. H. 4. fol. ultimo. Ognels case, ubi supra. & l. 7. fo. 39 b. Lillingtons case.

5. If there be Lord and Tenant, and the Rent is behind, and the Lord grant away his Seigniory, and dieth, the Executors shall have no remedy for these arrearages, because the grantor himself had no remedy for them when he died in respect of his grant, and the Statute is (in like manner as the Testator might or ought to have done) Et sic de similibus, for the act giveth no remedy when the Testator himself hath dispenced with the arrearages or had no remedy when he died.

6. If the Tenant make a Lease for life the remainder for life, the remainder in fee, the Tenant for life pays not the rent due to the Lord, the Lord dieth, the Tenant for life dieth, the Executors cannot distrain upon him in remainder, because he claims not by or from the tenant for life. And so it is of a reversion for the cause aforesaid. But if a man grant a Rent charge to A. for the life of B. and letteth the lands to C. for life, the remainder to D. in fee, the rent is behind by divers years, B. dieth, and after C. dieth, A. may distrain, D. in remainder for all the arrearages, by the latter branch of the Statute of 32. H. 8. and this diversity riseth upon the several pennings of the former branch and of this latter, which you may read in the Statute it self, and so expounded and adjudged (o) in Edridges case, and the latter clause giveth the lesser estate the greater remedy.

(o) Lib. 5. fo 118. Edridges case.

7. For the Arrearages of a Nomine pœnæ, and for relief, or for aid, Pur faire fits chivaler, or Pur file marier, this Statute * giveth no remedy. For the arrearages of the Nomine pœnæ, the Grantee himself may have an action of debt, and consequently his Executors or Administrators, and yet the Nomine pœnæ as an incident to the rent shall descend to the heir. For relief the Lord cannot have an action of debt but distrain, but his Executors by (p) the Common Law shall have an action of debt, for it is no rent but a casual improvement of services for the said Aids, if the Lord doth levy them, the Son and the Daughter respectively shall have an action of debt against the Executors or Administrators of the Lord, and if they have nothing, then against the heir, but this is by the Statute (q) of W. 1. Note that all manner of arrearages of rents issuing out of a freehold or inheritance, whether they be in money or corn, cattel, fowl, pepper, cumins, victual, spurs, gloves, or any other profit to be delivered or yielded, and whether they be annual, or every 2. 3. or 4. years, &c. or the like, are within this Statute, but work days, or any corporal service or the like are not within this Statute.

* 40. E. 3. 3. b 11. H. 4. 85. 14. E. 4. 4. 20. H. 7. 1. 2 28. H. 8. Dier 24.
(p) 34. E. 1. Avowry 233 F. N. B. 122. 10. H. 6. 11. 11. H. 6. 8. Mich. 32. H. 8. Rot. 429. Leaks case. Ognels case ubi supra. 3. E. 2. Debt 157.
(q) W. 1. c. 36. F. N. B. 82. 122.

8. A feme sole is seised of a rent in fee, &c. which is behind and unpaid, she taketh husband, the rent is behind again, the wife dieth, the husband by the Common Law should not have the arrearages grown due before the marriage, but for the arrearages became due during the coverture the husband might (r) have an action of debt by the Common Law, but now this Statute * by a particular clause giveth the husband the arrearages due before marriage, and the said double remedy for the same, and that he may distrain for the arrearages grown due during the coverture, so it giveth him that which he could not have before, and further remedy for that, which the Common Law gave him, and so it hath been (s) adjudged.

(r) 36. E. 3. 64. 10. H. 6. 11. * 22. H. 6. 35. F. N. B. 121.

The Bishop of (t) Norwich had the first fruits of all the Clergy within the Diocese at every avoidance, the Church became void, and another Parson became Incumbent, who paid the Bishop parcel of his First-fruits according to the taxation of the Church, and for the rest he had a day given unto him to pay it, the Bishop died, the residue was not paid, whereupon his Executors brought an action of debt, and it is adjudged that no action doth lie, because it is a meer spiritual thing and no lay contract, and therefore the Court had no jurisdiction to hold plea of it. I have been the longer in the exposition of the said Statute, for that it is a general case, and doth concern most part of the Subjects of England.

(s) Hill. 17. El. Rot. 457 inter Sharp & Pole. Vide Ognels case ubi supra.
(t) 19. E. 3. Jurisdict. 28.

Finis Libri Secundi.

THE

THE THIRD BOOK Of the First Part of the INSTITUTES OF THE Laws of England.

Chap. 1. Of Parceners. *Sect.* 241.

¶ Parceners ſont en deux maners ceſtaſcauoir, parceners ſolonq; l'courſe del common ley, & parceners ſolonq; cuſtom. Parceners ſolonque le courſe del cõmon ley ſont, lou hom ou feme ſeiſie de certain terres ou tenements en fee ſimple, ou en taile, nad iſſue forſq; files & devie, & les tenements diſcendont a les iſſues, & les files entront en les terres ou tenements iſſint

Parceners are of two ſorts (to wit) Parceners according to the courſe of the Common Law, and Parceners according to the cuſtom. Parceners after the courſe of the Common Law are where a man or woman ſeiſed of certain Lands or Tenements in fee ſimple or in tail, hath no iſſue but daughters & dieth, and the tenements deſcend to the iſſues, and the daughters enter into the lands or tenements

¶ Our Author having treated in his two former Books, firſt of eſtates of Lands and Tenements, and in his ſecond Book of Tenures, whereby the ſame have been holden: Now in his third Book doth teach us others things concerning both of them, as firſt the qualities of their eſtates. 2. In what caſes the entry of him that right hath may be taken away. 3. The remedies, and in what caſes the ſame may be prevented, or avoided. 4. How a man may be barred of his right for ever, and in what caſes the ſame may be prevented or avoided. For the firſt he having ſpoken of ſole eſtates diſtributeth the quality of eſtates into individed, and conditional. Individed into coparcenary, jointenancy, and tenancy in common. Coparcenary,

narp, into Parceners by the Common Law, and Partners by the Custom, and he beginneth his third Book with Parceners claiming by descent, which coming by the Act of Law, and right of Blood, is the noblest and worthiest means whereby Lands do fall from one to another. Conditional, into conditions expresse or in deed, and conditions in Law. Conditions in deed into gages, which he divideth into Vadia mortua, and Vadia viva. Vadia mortua, so called because either money or Land may be lost: & Viva, because neither money nor land can be lost, but both preserved. Then speaketh he of Descents, whereby the entry of him that right hath may be taken away.

Vide Sect. 385.

And next to that of the remedy how to prevent the same, viz. by continual claim. Then he teacheth how a man having a defeasible or an imperfect estate may perfect and establish the same by three means, viz. by Release, by Confirmation, and Attornment, where that is requisite. Having spoken of a Descent, being an act in Law which taketh away an entry, he doth then speak of a discontinuance, the act of the party, whereby the entry of them that right have shall be taken away. And next unto that he teacheth in what case the same may be avoided by Remitter. After he hath treated of descents and discontinuances, which take away entries, but bar not actions Lastly he setteth forth the learning of Warranties, (a curious and cunning kind of learning I assure you) whereby both Entry, Action, and Right may be barred, and the remedies how they may be prevented before they fall, and in what cases they may be avoided after they be fallen. And thus have you an account of the thirteen several Chapters of his third Book And now his method being understood, let us hear what our Author will say unto us concerning Parceners.

discendus a eux, dõques eis sont appels Parceners, & quaunt a files eis sont forsq; un heire a lour auncestor. Et eis sont appel Parceners, p̃ ceo que per le briefe q̃ ẽ appel Briefe de Participatione faciend', la ley eux voet cohert q̃ partitiõ terrã fait enter eux. Et si sont deux files al queux les terres discendont, donque eis sont appels deux Parceners. Et si sont trois files, donque eis sont appels trois Parceners, Et si quater files, quater Parceners, & illint outter.

so descended to them, then they are called Parceners, and be but one Heir to their Ancestor. And they are called Parceners, because by the Writ which is called *Breve de participatione faciendâ*, the Law will constrain them, that Partition shall be made among them: and if there be two daughters to whom the Land descendeth, then they be called two Parceners, and if there be three Daughters, they be called three Parceners, and four Daughters, four Parceners, and so forth.

(a) Bract. l. 2. fo. 66. 71. &c. & 76. &c. & lib. 5. fo. 443. Brit. fo. 58. 112. 128. 183. 184. 185. 189. 193 Flet. l. 5. c. 9. l. 6. c. 47. Glanv. l. 7. c. 3. & l. 13. c. 11.

¶ *Et quant a files eis sont forsque un heire a lour* (a) *ancestor.* This is falsly printed, for the original is, Et quanqu; files eis sont, eis sont parceners, & sont forsque un heire a lour auncester.

(b) Bract. l. 2. fo. 66. 76. Flet. ubi supr. Brit. ubi sup. & Statut. de Hiber.

¶ *Parceners.* (b) Jus descendit quasi uni hæredi propter juris unitatem, sicut sunt plures filiæ, &c. & ubi omnes simul & in solidum hæredes sunt, plures cohæredes sunt quasi unum corpus, propter unitatem juris quod habent. Whereupon it followeth, that albeit where there be two Parceners, (c) they have moieties in the Lands descended to them, yet are they both but one Heir, and one of them is not the moiety of an Heir, but both of them are but unus hæres.

(c) Vide Sect. 8. ver. fin.

(d) Fleta l. 5. c. 9. Flet. l. 6. c. 47.

And it is to be observed, that there is a diversity between a descent, which is an act of the Law, and a purchase, which is an act of the party. (d) For if a man be seised of Lands in fee, and hath issue two daughters, and one of the daughters is attainted of Felony, the father dieth, both daughters being alive, the one moiety shall descend to the one daughter, and the other moiety shall escheat.

But if a man make a lease for life, the remainder to the right heirs of A. being dead, who hath issue two daughters, whereof the one is attainted of Felony, in this case some have said that the remainder is not good for a moiety, but hold for the whole, for that both the daughters should have been (as Littleton saith) but one heir.

A man

A man makes a gift in tail, reſerving two ſhillings rent to himſelf during his life, and if he die his heir within age, then reſerving a rent of twenty ſhillings to his heirs for ever, he dieth having iſſue two daughters, the one of full age, the other within age, in this caſe the Donee ſhall hold by fealty only, inſomuch as the one daughter as well as the other is his heir, and both of them (as Littleton ſaith) make but one heir, ergo his heir is not within age, neither is his heir in that caſe of full age. But if the reſervation had been, and if he die, his heir neither being within age, nor of full age, &c. in this caſe the reſervation had been good, and if it doth not begin in his next heir, it ſhall never begin as this caſe is, for that the ſtirpe dury is not performed. (e) But yet if one of them be of age, and the other within age, the ſhall have her age and other priviledges and advantages that an heir within age ſhall have, and when they are demandants, for the nonage of the one, the Parol ſhall demur againſt them both. (f) Sunt autem plures participes quaſi unum corpus in eo quod unum jus habent, & oportet quod corpus ſit integrum, & quod in nulla parte ſit defectus. And when the right heir doth claim by purchaſe, he muſt be (ſay they) a compleat right heir in judgment of Law. And therefore if Lands be given to a man and to the heirs females of his body, and he hath iſſue a ſon and a daughter, and dieth, the daughter ſhall have the land by deſcent, but if a remainder be limited to the heirs females of the body of I.S. and he hath iſſue a ſon and a daughter, his daughter ſhall never take it by purchaſe, for that ſhe is not heir female of the body of I.S. becauſe he hath a ſon.

(e) Temps.E.1 Age 128. 8.E.2. Judgment 240. 30.E.3.7. 44.E.3. Age 47.26.Aſſ.65.13.E.3. Ag.51.28.Aſſ.22.29.Aſſ. 25.57.34.H.6.4.Aſſ.17.

(f) Fleta lib. 5.ca.9. & lib.6.ca.47.

If a man gives lands to another, and to the heirs males of his body, upon condition, that if he die without heir female of his body, that then the Donor ſhall re-enter, this condition is utterly void, for he cannot have an heir female, ſo long as he hath an heir male.

And as they be but one heir, and yet ſeveral perſons, ſo have they one entire freehold in the land, as long as it remains undivided in reſpect of any ſtrangers Præcipe. (g) But between themſelves to many purpoſes they have in judgment of law ſeveral freeholds, for the one of them may infeoffe another of them of her part, and make livery. (h) And this Coparcenary is not ſevered or divided by Law, by the death of any of them, for if one die, her part ſhall deſcend to her iſſue, and one Præcipe ſhall lie againſt them, for they ſhall never joyn as heirs to ſeveral Anceſtors in any Action Anceſtrel, but when one right deſcends from one Anceſtor: and then propter unitatem Juris, though they be in ſeveral degrees from the common Anceſtor, yet ſhall they joyn. But the iſſues of ſeveral Coparceners, becauſe ſeveral rights deſcend, ſhall never joyn as heirs to their Mothers, and yet when they have recovered, a Writ of Partition lieth between them.

(g) 19.E.4. 17.E.3.46.

(h) 37.H.6.8.19.H.6.45

Vid. ſect.313.

For example, (i) If a man hath iſſue two daughters, and is diſſeiſed, and the daughters have iſſue and die, the iſſues ſhall joyn in a Præcipe, becauſe one right deſcends from the Anceſtor, and it maketh no difference whether the common Anceſtor being out of poſſeſſion, died before the daughters, or after, for that in both caſes they muſt make themſelves heirs to the Grand-father which was laſt ſeiſed, and when the iſſues (k) have recovered they are Coparceners, and one Præcipe ſhall lie againſt them. And likewiſe if the iſſues of two Coparceners which are in by ſeveral deſcents, be diſſeiſed, they ſhall joyn in aſſiſe. But in the ſame caſe, if the two daughters had been actually ſeiſed, and had been diſſeiſed, after their deceaſes the Iſſues ſhall not joyn, becauſe ſeveral rights deſcended to them from ſeveral Anceſtors; and yet when they have ſeverally recovered, they are Coparceners, and one Præcipe lieth againſt them, and a releaſe made by one of them to the other, is good. And ſo note a diverſity inter deſcenſum in capita, & in ſtirpes.

(i) 7.E.3. 30.34. 48.E.3.14. 24.E.3.13. F.N.B. 221. 35.H.6.23. 27.E.3.89. 31.H.6.14.b

And the Statute of Glocester, cap. 6. made An. 6. Edw.1. ſpeaketh, Si home murge, &c. If a man dieth, ſo as that Statute extendeth not but where one dieth and hath divers heirs, whereof one is ſon or daughter, brother or ſiſter, nephew or neece, and the others be in a further degree, all their heirs from henceforth ſhall have their recovery by Writ of Mortdanceſtor. And this ſeemeth to me to be the Common Law, for Bracton who writ before this Statute, ſaith (l) In caſu cum ſit aſſiſa mortis anteceſſor' conjungenda cum conſanguinitate, non erit poſtea recurrendum ad præcipe de Conſanguinitate, ſed ad aſſiſam mortis, quia perſona quæ propinquior eſt, & facit aſſiſam, & trahit ad ſe perſonam & gradum remotiorem ut ubi potius procedat aſſiſa quam præcipe, quia id quod eſt magis remotum non trahit ad ſe quod eſt magis junctum, ſed è contrario in omni caſu. And herewith agreeth the moſt of our (m) Books: and two Coparceners ſhall have a Writ of Ayel, and by their count ſuppoſe the common Anceſtor to be grandfather to the one, and great grandfather to the other.

(l) 37.H.6.8. 9.E.4. 13.b. 42.E.3.16.17. (l) Bracton lib.4.254.b. Britton fol. 181. 182.& 178.204. Fleta li.5.c.1. & 2. & 9. in fine.

(m) 19 E.3.tit. Joynd.in Action 31. 7.E.3.30. & 34. 27.E.3.89. 48.E.3. 14. 24.E.3.13. F.N.B. 211. Regiſter.

I have been the longer herein, for that this Inheritance of Coparceners is the rareſt kind of Inheritance that is in the Law

Vide 32.E.1. Joindre in Action 34.13.E 3.ibid. 29.Temps E.2. ib.35. 30.E.1.ib.36.25.H.6.23

Furthermore it is to be obſerved, That herein alſo in caſe of Coparceners (n) ſometimes the deſcent is in Stirpes, (viz.) To Stocks or Roots, and ſometime in Capita, To Heads: As if a man hath Iſſue two daughters and dieth, this deſcent is in Capita, viz. that every one ſhall inherit alike, as Littleton here ſaith. But if a man hath Iſſue two daughters, and the

(n) Bracton lib.2.66. Britton cap. 71. Fleta lib.5. cap.9. & 6. cap.47.

the eldeſt daughter hath iſſue three daughters, and the youngeſt, one daughter, all theſe four ſhall inherit, but the daughter of the youngeſt ſhall have as much as the three daughters of the eldeſt, Ratione ſtirpium, and not Ratione Capitum, for in judgment of Law every daughter hath a ſeveral Stock or Root.

Alſo if a man hath iſſue two daughters, and the eldeſt hath iſſue divers ſons and divers daughters, and the youngeſt hath iſſue divers daughters, the eldeſt ſon of the eldeſt daughter ſhall only inherit, for this deſcent is not in Capita, but all the daughters of the youngeſt ſhall inherit, and the eldeſt ſon is Coparcener with the daughters of the youngeſt, and ſhall have one moiety, (viz.) his Mothers part: ſo that men deſcending of daughters may be coparceners, as well as women, and ſhall joyntly implead and be impleaded, as is aforeſaid.

(o) 20.E.2.Nuper ob.14 F.N.B.197. 7 E.3.13.

(o) If there be two Coparceners, and the one being a Rationabili parte of a Nuper obiit againſt the other, the Defendant claim by purchaſe, and diſclaim in the blood, the Plaintiff ſhall have a Mordanceſter againſt her as a ſtranger for the whole.

Bract.l.2.fo.66.71.&c. Brit.c.71.Flet.l.5.c.9.

¶ *Parceners ſont en deux manners.* Here Littleton doth divide Parceners, and herewith do agree the antient Books of Law.

¶ *Et ils ſont appels Parceners, &c.* Parceners, Participer, Et dicuntur Participes, quaſi partis capaces, ſive partem capientes, quia res inter eas eſt communis ratione plurium perſonarum. This Tenancy in the antient Books of Law is called Adæquatio, and ſometime Familia hirſciſcunda, an Inheritance to be divided, and many times Parceners are called Coparceners.

(p) Regiſt.Orig.76.316 Regiſt.Jud.80.Brit. ubi ſup.Fler.ubi ſup. Br.ubi ſupra, & li.5.fo.445.b.

¶ Breve de Participatione facienda. This is falſe printed, and ſhould be, De Partitione facienda, a Writ whereby the Coparceners are compelled to make partition. Item eſt alia Actio mixta, quæ dicitur Actio Familiæ hirciſcundæ, & locum habet inter eos qui communem habent hæreditatem, &c. Et locum habet ut videtur, inter Cohæredes, ubi agitur de propartę ſororum, vel inter alios ubi res inter partes & Cohæredes dividi debeat, ſicut ſunt plures ſorores, quæ ſunt quaſi unus hæres, vel inter plures fratres, qui ſunt quaſi unus hæres ratione rei quæ divisibilis eſt inter plures maſculos, &c.

¶ *Des terres & tenements.* It is to be conſidered of what Inheritances daughters ſhall be Coparceners, and how and in what manner partition ſhall be made between them. Wherein it is to be obſerved, That of Inheritances ſome be entire, and ſome be ſeveral: again, of entire, ſome be diviſible, and ſome indiviſible. And here it appeareth by Littleton, That Parceners take their appellation, becauſe they are compelled to make partition by writ of Partitione facienda; where note, that Littleton alloweth well to find out the true derivation of words, as often hath been and ſhall be obſerved.

If a Villain deſcend to two Coparceners, this is an entire Inheritance, and albeit the Villain himſelf cannot be divided, yet the profit of him may be divided, one Coparcener may have the ſervice one day, one week, &c. and the other another day or week, &c. and for the ſame reaſon a woman ſhall be endowed of a Villain, as before it appeareth in the Chapter of Dower. Likewiſe an Advowſon is an entire Inheritance, (q) and yet in effect the ſame may be divided between coparceners, for they may divide it to preſent by turns.

(q) 13.E.2.tit.Quo.imp. 170.17.E.3.38.Flet.l.5. cap. 9. Mir.c.2. Sect.17.

A Rent charge is entire, and againſt common right, (r) yet may it be divided between Coparceners, and by act in Law the Tenant of the Land is ſubject to ſeveral diſtreſſes, and partition may be made before ſeiſin of the rent.

(r) 44.E.3.tit.Partic.6. & tit.Avowry 75.2.H.6. fol. 11.

Entire Inheritances not diviſible, we find divers in our Books, and ſome Inheritances that are diviſible, and yet ſhall not be parted or divided between Coparceners, as hereafter ſhall appear.

(ſ) 3.E.2.tit.Dower 123

(ſ) If a man have reaſonable Eſtovers, or Houſebote, Heybote, &c. appendant to his freehold, they are ſo entire as they ſhall not be divided between Coparceners. (t) So if a Corody incertain be granted to a man and his heirs, and he hath iſſue divers daughters, this Corody ſhall not be divided between them, but of a Corody certain, Partition may be made.

(t) 17.E.2.nuper ob.12. 16 E.3.ib.11.5. Mariæ Dier 153.

(u) Homage and Fealty cannot be divided between Coparceners. (w) So a Pitchary incertain, or a common ſans nombre cannot be divided between Coparceners, for that would be a charge to the Tenant of the Soil. (x) The Lord Mountjoy ſeiſed of the Mannor of Canford in fee, did by Deed indented and inrolled, bargain and ſell the ſame to Brown in fee, in which Indenture this clauſe was contained, Provided always, and the ſaid Brown did covenant and grant to and with the ſaid Lord Mountjoy, his Heirs, and Aſſigns, that the Lord Mountjoy, his Heirs and Aſſigns might dig for Ore in the Lands (which were great waſtes) parcel of the ſaid Mannor, and to dig Turf alſo for the making of Allom. And in this caſe three points were reſolved by all the Judges, Firſt, that this did amount to a grant of an Intereſt and Inheritance to the Lord Mountjoy, to dig, &c. Secondly, That notwithſtanding

(u) 17.E.3.72.

(w) 13.E.2.Quare Imp. 170. Flera l.5.c.9.

(x) Mich.24.& 25.Eliz. Inter Comitem de Huntingdon & Seignior Mountjoy.

ding this grant. Brown his heirs and assigns might dig also, and like to the case of Common Sans nombre. Thirdly, that the Lord Mountjoy might assign his whole interest to one, two, or more, but then if there be two or more, they could make no division of it, but work together with one stock, neither could the Lord Mountjoy, &c. assign his interest in any part of the waste to one or more, for that might work a prejudice and a surcharge to the tenant of the land, and therefore if such an incertain inheritance descendeth to two Coparceners, it cannot be divided between them. Vide 5. Mariæ Dier 153.

But then it may be demanded, what shall become of these Inheritances? the answer is, that it appeareth in our Books, that regularly (y) the eldest shall have the reasonable Estovers, Common, Piscary, Courtesy incertain, &c. and the rest shall have a contribution, that is, an allowance of the value in some other of the Inheritance, and so of the like. But what if the common Ancestor left no other Inheritance to give any thing in allowance, what contribution or recompence shall the younger Coparceners have? It is answered, that if the Estovers or Piscary or Common be incertain, then shall one Coparcener have the Estovers, Piscary or Common, &c. for a time, and the other for the like time: as the one for one year, and the other for another, or more, or lesser time, whereby no prejudice can grow to the owner of the soil. Or in case of the Piscary, the one may have one fish, and the other the second, &c. as one may have the first draught, and the second the second draught, &c. And if it be of a park one may have the first Beast, and the second the second, &c. And if of a Mill, one to have the Mill for a time, and the other the like time, or the one, one toll dish, and the other the second, &c. And this appeareth to be the antient Law, for it is said, (z) Sunt aliæ res hereditariæ quæ veniunt in partitionem, quæ cum dividi non possunt conceduntur uni, ita quod aliæ coheredes alibi de communi hæreditate habeant ad valorem, sicut sunt vivaria, Piscariæ, parci, vel saltem quod partem habeant pro defectu, sicut secundum piscem, tertium vel quartum, vel secundum tractum, tertium vel quartum. Item in parcis secundam, tertiam aut quartam. (y) 2. E. 2. dower 122. 13 E. 2. quar. Imp. 170 Fitz. ubi sup. vide Mirror c. 2. Sect. 17. (z) Bract. l. 2. 76. Britton c. 71. 72. Fleta l. 5. c. 9.

But now let us turn our eye to inheritances of Honour and Dignity. And of this there is an antient Book case (*) in 23. H. 3. tit. partition 18. in these words: Note, if the Earldom of Chester descend to Coparceners, it shall be divided between them as well as other Lands, and the eldest shall not have this Dignity and Earldom entire to her self. Quod nota, adjudge per totam Curiam. By this it appeareth that the Earldom (that is, the possessions of the Earldom) shall be divided, and that where there be more Daughters than one, the eldest shall not have the Dignity and Power of the Earl, that is, to be a Countess. What then shall become of that Dignity? The answer is (a) that in that case the King, who is the Soveraign of Honour and Dignity, may for the incertainty, confer the Dignity upon which of the Daughters he please. And this hath been the usage since the Conquest, as it is said. (*) 23. H. 3. tit. partit. 18. (a) 3. H. 3. tit prescript.

But if an Earl that hath his dignity to him and his heirs dieth, having issue one daughter, the dignity shall descend to the daughter, for there is no incertainty, but only one daughter, the dignity shall descend unto her and her posterity, as well as any other inheritance, and this appeareth by many presidents, and by a late judgment given in Sampson Leonards case, who maried with Margaret the only sister and heir of Gregory Fines Lord Dacre of the South, and in the case of William Lord Ros.

But there is a difference between a dignity or name of Nobility, and an office of Honor. for if a man hold a Manor of the King to be high Constable of England, and die having issue two daughters, the eldest daughter taketh husband, he shall execute the office solely, and before mariage it shall be exercised by some sufficient Deputy, and all this was resolved by all the Judges of England, in the case of (b) the Duke of Buckingham. But the dignity of the Crown of England is without all question descendible to the eldest daughter alone, and to her posterity, and so hath it been declared by Act of Parliament, (*) For, Regnum non est divisible. And so was the descent of Troy. (b) 11. Eliz. Dier 285. the Duke of Buckinghams case. (*) 25. H. 8. cap. 22.

Præterea sceptrum Ilione quod gesserat olim,
Maxima natarum Priami. Virgil 1. Æneid.

(b) If a Castle that is used for the necessary defence of the Realm, descend to two or more Coparceners, this Castle might be divided by Chambers and Rooms as other Houses be, but yet for that it is Pro bono publico & pro defensione Regni, it shall not be divided, for as one saith, Propter jus gladii dividi non potest. And another saith, (*) Pur le droit del espee que ne serra divisa en aventure que la force del Realme ne defaille pax taunt. But Castles of habitation for private use, that are not for the necessary defence of the Realm ought to be parted between Coparceners as well as other houses, and wifes may thereof be endowed, as hath been said in the Chapter of Dower. (b) Bracton l. 2. f. 76. Fleta l. 5. cap. 9. (*) Britton 136. 187. Vide Sect. 36.

If there be two Coparceners of certain Lands with warranty, and they make partition

of the Land, the warranty ſhall remain, becauſe they are compellable to make partition.

(c) 29.E.3.garrantie 70
(d) Irin.Pickering.
8.E.3.Rot.34.

(c) But otherwiſe it was of Joyntenants at the Common Law, as ſhall be ſaid hereafter in his proper place. (d) Thomas de Eberſton ſeiſed of the Manor of Eberſton, within the Foreſt of Pickering, had kept time out of mind a Woodward for keeping of the Woods parcel of that Manor, and had the bark of all the Trees felled in the ſaid Woods by any of the Foreſters of that Foreſt as belonging to his Manor (which he could not have without a Preſcription.) Thomas of Eberſton infeoffed two of the ſaid Manor, between whom partition was made, ſo as one of them had the own half in ſeverality, and the other the other half. Robert Wyerne afterwards had the one half, and Thomas Thurnile the other, and they in the Eyre of Pickering claimed to keep a Woodward within the ſaid Woods, and the bark aforeſaid, and the truth hereof and the uſage being ſpecially found by the Foreſtors, Verderors, and Regardors, Willoughby, Hungerford, and Hanbury, Juſtices Itinerants within that Foreſt gave judgment as followeth: Ideo conſideratum eſt quod prædict' Robertus & Thomas habeant Woodwardum & Corticem in boſco prædicto de quercubus prædictis ſibi & hæredibus ſuis imperpetuum, Salvo ſemper jure, &c.

Sect. 242.

¶ Auxy ſi home ſeiſie de tenements en fee ſimple, ou en fee taile, deux ſauns iſſue de ſon corps engender, & les tenements diſcendont a ſes ſoers, eels ſont Parceners, come eſt avantdit. Et en meſme le maner, lou il nad pas ſoers mes les tenements diſcendont a ſes aunts, eels ſont Parceners, &c. Mes ſi home nad forſque un file, el ne poit eſtre dit Parcener, mes el eſt appelle file & heire, &c.

ALſo if a man ſeiſed of Tenements in Fee ſimple or in Fee tail, dieth without iſſue of his body begotten, and the Tenements deſcend to his Siſters, they are Parceners as is aforeſaid. And in the ſame manner, where he hath no Siſters but the lands deſcend to his Aunts, they are Parceners, &c. But if a man hath but one Daughter, ſhe ſhall not be called Parcener, but ſhe is called Daughter and Heir, &c.

¶ *Ou en fee taile.* This muſt be intended of an eſtate tail made to the Father and to the heirs of his body, for otherwiſe if the ſtate tail were made to a man and to the heirs of his body, his ſiſters cannot inherit. And not only Daughters ſhall be Coparceners, but Siſters, Aunts, great Aunts, &c.

¶ *File & heire, &c.* Here by (&c) is implyed Siſter and heir, Aunt and heir, great Aunt and heir, and ſo upward.

Sect. 243.

¶ BY this Section, and the (&c.) in the end of it, It is to be underſtood that there are two kind of partitions between Coparceners, the one in deed or expreſs, and the other in Law or Implicite. Of partitions in deed or expreſs, ſome be voluntary, whereof Littleton enumerates four Manners, and one compulſary, that is, by Writ of Partition.

¶ Et eſt aſcavoir, que partition enter parceners poit eſtre fait en divers maners. Un eſt quãt els agreeont de fair partition, & font partition de les Tenements, ſicome ſi ſoyent deux parceners

AND it is to be underſtood, that partition may be made in divers manners. One is when they agree to make partition, and do make partition, of the tenements. As if there be two Parceners to divide between them

a devider enter eux les Tenements en deux parts, cheſcun part per ſoy en ſeveraltie, & d'egal value. Et ſi ſont 3 Parceners a devider les tenements en trois parts per ſoy en ſeveraltie, &c.

the tenements in two parts, each part by it ſelf in ſeveralty, and of equal value. And if there be three Parceners to divide the tenements in three parts by it ſelf in ſeveralty, &c.

The firſt partition in deed between coparceners, is that which Littleton here ſpeaketh of, viz. Quant els agreont & ſont partition de les tenements, &c. cheſcun part per ſoy en ſeveralty & de egal value, &c. If Coparceners make partitions at full age, and unmatried, and of ſane memorie of Lands in fee ſimple, it is good and firm for ever, albeit the values be unequal, but if it be of lands entailed, or if any of the Parceners be of non ſane memorie, it ſhall bind the parties themſelves, but not their iſſues unleſs it be equal. Or if any be Covert, it ſhall bind the husband, but not the wife or her heirs. Or if any be within age it ſhall not bind the Infant, as ſhall be ſaid more fully hereafter. The ſecond partition followeth in the next Section. And here the (&c.) implieth further, that if there be four Parceners, then four parts, If five, five parts, and ſo forth. It further implieth, that all this muſt be in ſeveralty, whereof and with what limitations this is to be underſtood it hath been declared before. Vide Sect. 241.

Sect. 244.

¶ Un auter partition eſt, a eſtier per agreement enter eux, certeine de lour amies, de fair partitiõ des terres ou tenemẽts en le forme avauntdit. Et en tiels caſes apres tiel partition, le eigne file prymerment eſleira un des partes iſſint dibides, que el voit aver pur ſa part, & donques la ſecond file procheine apres luy auter part, & donques l'tierce ſoer auter part, donques le 4. auter part, &c. ſi iſſint ſoit que ſoient pluſors ſoers, &c. ſi ne ſoit autrement agree enter eux. Car il poit eſtre agree enter eux, que un avera tiels tenemẽts, & un auẽ tiels tenemẽts, &c. ſans aſcũ tiel prymer election, &c.

ANother partition there is, *viz.* to chooſe by agreement between themſelves certain of their friends to make partition of the Lands or Tenements in form aforeſaid. And in theſe caſes after ſuch partition, the eldeſt Daughter ſhall chooſe firſt one of the parts ſo divided which ſhe will have for her part, and then the ſecond Daughter next after her another part, and then the third Siſter another part, then the fourth another part, &c. if ſo be that there be more Siſters, &c. unleſs it be otherwiſe agreed between them. For it may be agreed between them that one ſhall have ſuch Tenements, and another ſuch Tenements, &c. without any primer election.

¶ *Donques le 4. auter part, &c.* Here the (&c.) implieth the fifth ſiſter, and after her the ſixth, and ſo forth. 31. Aſſ. 26.

¶ *Car il poet eſtre agree enter eux que un avera tiels tenemẽts & un auter tiels tenements, &c.*

Here by this (&c.) is implied divers rules of Law, proving the concluſion of Littleton in this Sect. viz. Modus & conventio vincunt legem. Pacto aliquid licitum eſt, quod ſine pacto non admittitur. Quilibet poteſt renunciare juri pro ſe introducto. But with this limitation, that theſe Rules extend not to any thing, that is againſt the Commonwealth, or common right. For conventio privatorum non poteſt publico juri derogare.

Sect. 245.

¶ *Enitia pars.* It is called in old Books * Æiſneria, which is derived of the French word Eiſne, or eldeſt, as much to ſay as the part of the eldeſt, for Bracton ſaith, Quod Eiſneria ſemper eſt præferenda propter privilegium ætatis, ſed eſto quod filia primogenita relicto nepote vel nepte in vita patris vel matris deceſſit, præferenda erit ſoror antenata tali nepoti vel nepti quantum ad Eiſneriam, quia mortem parentum expectant. And herewith agreeth Fleta alſo, Quod nota, whereby it appeareth that Enitia pars is perſonal to the eldeſt, and that this prerogative, or privilege deſcendeth not to her iſſue, but the next eldeſt ſiſter ſhall have it. (f) And here is a diverſity to be obſerved between this caſe of a partition in deed by the act of the parties, (for there the privilege of election of the eldeſt daughter ſhall not deſcend to her iſſue.) And where the Law doth give the eldeſt any privilege without her act, there that privilege ſhall deſcend. As if there be divers Coparceners of an Advowſon * and they cannot agree to preſent, the Law doth give the firſt preſentment to the eldeſt, and this privilege ſhall deſcend to her iſſue, nay her Aſſignee ſhall have it, and ſo ſhall her husband that is tenant by the curteſie have it alſo.

* Bract. l. 2. 77. Fleta l. 5. c. 9. Britton c. 72.

(f) 45. E. 3. fines 41. 19. E. 3. quar. Imp. 59. 18 E. 2. ibid. 176. 5. H. 5. 10. 38. H. 6. 9. Doct. & Stud. 116. 117. Vid. Bract. 238. 249. * 5. H. 7. 8. 34. H. 6. 40. 11. H. 4. 54. 20 E. 3. qua. Imp. 63. 34. E. 3. Ibid. 198. 15. E. 3. Dar. Preſentment 11. 17. E. 3. 20. 21. 21. E. 3. 21 F. N. B. 32.

¶ *Donques il eſt dit leigne ſoer eſlier pluis darreine, &c.* By this and the &c. in the end of this Section is implyed, the rule of Law is Cujus eſt diviſio, alterius eſt electio. And the reaſon of the Law is for avoiding of partiality,

Ipſæ etenim Leges cupiunt ut Jure regantur.

which might apparently follow if the eldeſt might both divide and chooſe. Now followeth the third partition in deed.

ET la part que leigne ſoer ad eſt appelle en Latin Enitia pars. Mes ſi les parceners agreeont, que leigne ſoer ferra partition de les tenements en le fezm abantdit, & ſi ceo el fait, donque il eſt dit q̄ leigne ſoer eſliet pluis darreine pur ſa part, & apres chaſcun de ſes ſoers, &c.

AND the part which the eldeſt ſiſter hath is called in Latin *Enitia pars.* But if the parceners agree that the eldeſt Siſter ſhall make partition of the Tenements in manner aforeſaid, and if ſhe do this, then it is ſaid that the eldeſt Siſter ſhall chooſe laſt for her part, and after every one of her Siſters, &c.

Sect. 246.

¶ UN auter partition ou allotment eſt, ſi come ſoient quater parceners & apres le partition de les Terres fait, cheſcū part del terre ſoit per ſoy ſolement eſcript en un petit eſcrobet, & ſoit covert tout en cere, en le maner dun petit pile, iſſint que nul poit veier leſcrobet, & donque ſoient les 4 piles de cere mis en un bōnet a garder, en les maines dun indifferent home, &

ANother partition or allotment is, as if there be four parceners and after partition of the Lands be made, every part of the Land by it ſelf is written in a little ſcrowl, and is covered all in wax in manner of a little ball, ſo as none may ſee the ſcrowl, and then the four balls of wax are put in a hat to be kept in the hands of an indifferent man, and then the eldeſt daughter ſhall firſt

donqs

donqꝫ leigne file primermẽt mettra ſa maine en le bonnet, quel prendra un pile de cere auecqꝫ leſcrovet deins eſt le pile pur ſa part, & donqꝫ le ſecond ſoer mettra ſa maine en le bonnet & prendra un auter, le tierce ſoer le 3. pile, & le 4. ſoer le 4. pile, &c. & en ceo cas covient cheſcun de eux luy tener a ſa chance & allotment.

put her hand into the hat and take a ball of wax with the ſcrowl within the ſame ball for her part. And then the ſecond Siſter ſhall put her hand into the hat and take another, the third ſiſter the 3. ball, & the 4. ſiſter the 4. ball, &c. And in this caſe every one of them ought to ſtand to their chance and allotment.

¶ *Allotment.* Of this partition by Lots antient Authors * write, that in that caſe Coparceners Fortunam faciunt judicem: And Littleton here termeth it chance, for in the end of this Section he ſaith, that in this caſe every of them ought to hold her ſeif to her chance, and of this kind of diviſion you ſhall read in holy Scripture, where it is ſaid, Dedi vobis poſſeſſionem quam dividetis ſorte.

* Fleta l. 5. c. 9. Bract. l. 2. 75. Britt. c. 72. Vid. Numb. cap. 26. ver. 54. 55. & ca. 33. ver. 54. Of diviſion by lots.

The &c. in the end of this Section implieth that if there be more coparceners there muſt be more balls according to the number of the parceners.

Sect. 247.

¶ Item, un auter partition il y ad ſicome ſont quater parceners, & ils ne voilent agreer a partition deſire fait enter eux, donque lun poit aver bꝛe De partitione facienda, enverſ les autꝫ troiſ: ou deux d eux poient aver bꝛe De partitione facienda enverſ les auters deux, ou troiſ de eux poyent aver bꝛe De partitione facienda enverſ le quart, a lour election.

ALſo there is another partition, as if there be four Parceners, and they will not agree to a partition to be made between them, then the one may have a writ of *Partitione facienda* againſt the other three, or two of them may have a writ of *Partitione facienda* againſt the other two, or three of them may have a writ of *Partitione facienda* againſt the fourth at their election.

¶ HEre followeth the fourth partition in Deed. Littleton having ſpoken of voluntary partitions, or partitions by conſent; Now he ſpeaks of a partition by the compulſary means of Law where no partition can be had by conſent. Now of what inheritance partition may be made by the writ of Partitione facienda may partly appear by that which hath been ſaid. Moreover it is to be obſerved that the words of the writ De partitione facienda be * Quod cum eadem A. & B. infimul & pro indiviſo teneant tres acras terræ cum pertinen', &c. And note that this word (Tenet) in a writ doth always imply a Tenant of a Freehold. And therefore (g) if one Coparcener maketh a Leaſe for years, yet a Writ of partition doth lie. But if one of them make a leaſe for life, a Writ of Partition doth not lie between them, becauſe Non infimul & pro indiviſo tenent, they do not hold the freehold together, and the Writ of Partition muſt be againſt the Tenant of the Freehold. (h) If one Coparcener diſſeiſe another, during this Diſſeiſin a Writ of Partition doth no lie between them, for that Non tenent infimul & pro indiviſo.

* 3. E. 3. 47. 48.

(g) 21. E. 3. 57. F. N. B. 62. g. 28. H. 6. 2. 11. H. 4. 3. 4. H. 7. 10. b.

(h) 4. H. 7. 9. 11. Aſſ. 23.

But there be other partitions in deed then here have been mentioned. (i) For a Partition made between two coparceners that the one ſhall have and occupy the land from Eaſter until the firſt of Auguſt only in ſeverality by himſelf, and that the other ſhall have and occupy the Land from the firſt of Auguſt until the Feaſt of Eaſter yearly to them and their heirs, this is a good partition. Alſo if two Coparceners have two Mannors by deſcent, and

(i) Temps E. 1. Partit. 2. F. N. B. 69. I.

and they make partition, that the one ſhall have the one Manor for one year, and the other the other Manor for this year, and ſo alternis vicibus to them and their heirs, this is a good Partition. The ſame Law is if the partition be made in form aforeſaid, for two or more years, and each Coparcener have an eſtate of Inheritance, and no Chattel, albeit either of them alternis vicibus have the occupation but for a certain term of years.

Of Partitions in Law, ſome be by act in Law without judgment, and ſome be by Judgment, and not in a Writ de partitione faciendâ. And of theſe in order.

(k) If there be Lord, three Coparceners Moines, and Tenant, and one Coparcener purchaſe the Tenancy, this is not only a partition of the Moinalty, being extinct for a third part, but a diviſion of the Seigniory paramount, for now he muſt make ſeveral Homages.

(l) If one Coparcener make a Feoffment in fee of her part, this is a ſeverance of the Coparcenary, and ſeveral Writs of Præcipe ſhall lie againſt the other Coparcener, and the Feoffee.

(m) If two Coparceners be, and each of them taketh husband and have iſſue, the wives die, the Coparcenary is divided, and here is a partition in Law.

(n) If two Coparceners be, and one diſſeiſe the other, and the Diſſeiſee bringeth an Aſſiſe, and recover, it hath been ſaid, That ſhe ſhall have judgment to hold her moity in ſeveralty. And this ſeemeth (ſay they) very antient, and thereupon bouth Bracton, * Si res fuerit communis locum habere poterit communi dividendo judicium. And (o) (ſay they) if the one coparcener recover againſt another in a Nuper obiit, or a rationabili parte, the Judgment ſhall be, That the demandant ſhall recover and hold in ſeverality. But Britton is to the contrary, for he ſaith, * Et ſi aſcun des Parceners ſoit enget ou diſturbe de ſa ſeiſin per ſes auters Parceners, un, ou pluſors, al diſſeiſee viendra aſſiſe per ſeveral pleint ſur les Parceners & recovera, mes nemy tener en ſeveraltie, mes en common ſolonque ceo que avant le fiſt, &c. (p) And this ſeemeth reaſonable, for he muſt have his judgment according to his Plaint, and that was of a moiety, and not of any thing in ſeverality, and the Sheriff cannot have any Warrant to make any partition in ſeverality or by Meres and Bounds.

(k) 36.H.6.7.

(l) 37.H.6.8,43.E.3.1.

(m) 17.E.3.14.15.

(n) 12.E.3. Judgm.162. 7.Aſſ.10. 7.E.3.49. 10.Aſſ.27. 12.Aſſ.5.17. 10.E.3.40.43. 28.Aſſ.35. 23.Aſſ.18. 20.E.3.Aſſ.62. 3.E.3.48.b. 19.H.6.45. 7.H.6.4. 3.E.4.10.

* Bract.l.4.fo.216.b.

o)3.E.3.48.21.R.2.tit. Nuper ob.2 2.4.H.7.10. 20.E.1.Nup.ob.18. F.N.B.9.b.

* Britton fo 112 a.

(p) Lib.6.fo.12.& 13. Morrices caſe accorde.

Sect. 248.

NOte the firſt judgment in a Writ of Partition, whereof Littleton here ſpeaketh is, Quod partitio fiat inter partes prædictas de tenementis prædictis, cum pertinentiis, after which Judgment, by this &c. viz. Tenements, &c. is implied, That a Writ ſhall be awarded to the Sheriff, Quod aſſumptis tecum 12. liberis & legalibus hominibus de Vicineto tuo, per ques rei veritas melius ſciri poterit, in propria perſona tua accedas ad tenementa prædicta cum pertin', & ibidem per eorum ſacrament' in præſentia partium prædictarum per te præmuniend' ſi intereſſe voluerint, prædicta tenementa cum pertin' per ſacrament' bonorum & legalium hominum prædictorum habito reſpectu ad verum valorem earundem in duas partes æquales partiri & dividi, & unam partem partium illarum, &c.

Bract.fo.66.&c. Brit.71. &c. Brit.c.72. Flet.l.5.c.9.

Ockam ca. Quid ſit liber judiciarius.

This laſt &c. in this Section is evident.

¶ *Judgement.* Judi-

ET quant iudgement ſera done ſur tiel brief, le iudgment ſerra tiel, q̄ partition ſerra fait enter les parties, & que le Vicount en ſon p̄per perſon alera a les terres & tenements, &c. & que il per l' ſerement de xii. loyalx homes de ſon Bayliwick, &c. ſerra partition enter les parties, & que lun part de meſmes les Terres et Tenements ſoyent aſſignes al plaintif, ou a lun des plaintifs, et un auter part a un auter Parcener, &c. nient ſen-

AND when judgment ſhal begiven upon this Writ, the judgment ſhall be thus, That partition ſhall be made between the parties, and that the Sheriff in his proper perſon ſhall go to the Lands and tenements, &c. and that he by the oath of 12 lawful men of his Bailiwick, &c. ſhall make partition between the parties, and that one part of the lands & tenements ſhal be aſſigned to the pl', or to one of the plaintiffs, & another part to another parcener, &c. not making mention in

ſant

ſant mention en le iudgement de leigne ſoer pluis q̄ ꝺ̄ puiſn̄.

the judgement of the eldeſt ſiſter, more than of the youngeſt.

cium eſt quaſi juris dictum, ſo called, becauſe ſo long as it ſtands in force, pro veritate accipitur, and cannot be contradicted: And thereupon Antiquity called that excellent Book in the Exchequer, Domeſday, Dies Judicii, Sicut enim diſtricti & terribilis examinis illa noviſſima ſententia nulla tergiverſationis arte valet eludi, &c. ſic ſententia ejuſdem libri inficiari non poteſt, vel impune declinari, ob hoc nos eundem librum judiciarium nominamus, &c. quod ab eo ſicut a prædicto judicio non licet ulla ratione diſcedere. By Littleton it appeareth, That the forms of Judgments, Pleas, and other legal proceedings, do conduce much to the right underſtanding of the Law, and of the reaſon thereof, as here Littleton rightly collecteth, upon the form of the judgement that the Sheriff ſhall deliver to them ſuch parts as he thinks good, and that the eldeſt Coparcener ſhall have no election when partition is made by the Sheriff. And it is to be obſerved, that there be two Judgements in a Writ of Partition: Of the former Littleton ſpeaketh in this place. And when partition is made by the oath of twelve men, and aſſignment and allotment thereof, and ſo returned by the Sheriff, then the latter judgment is, Ideo conſideratum eſt, quod partitio prædicta firma & ſtabilis imperpetuum teneatur, and this is the principal judgment. (q) And of the other, before this be given, no writ of Error doth lie.

(q) Lib. 11. fol. 40. Hill. 39. Eliz. Rot. 327. In Banke le Roy inter An Countes de War. & le Seignior Berkley.

¶ *Shireve* is a word compounded of two Saxon words, Viz. Shire, and Reve. Shire, Satrapia, or Comitatus, cometh of the Saxon Verb Shiram, i. Partiri, for that the whole Realm is parted and divided into Shires: And Reve is præfectus, or præpoſitus; ſo as Shireve is the Reve of the Shire, præfectus Satrapiæ, provinciæ, or Comitatus. And he is called Præfectus, becauſe he is the chief Officer to the King within the Shire, for the words of his Patent be, Commiſimus vobis cuſtodiam Comitatus noſtri de, &c. And he hath a threefold cuſtody, triplicem cuſtodiam, viz. Firſt, Vitæ Juſtitiæ, for no Suit begins, and no Proceſs is ſerved but by the Sheriff. Alſo he is to return indifferent Juries for the trial of mens lives, liberties, lands, goods, &c. Secondly, Vitæ legis, he is after long ſuits, and chargeable, to make execution, which is the life and fruit of the Law. Thirdly, Vitæ Reipublicæ, he is principalis Conſervator pacis within the County, which is the life of the Common-wealth, Vita Reipublicæ pax.

He is called before Sect. 234. Viſcount, in Latin, Vicecomes, i. Vice Comitis, that is, in ſtead of the Earl of that County, who in ancient time had the regiment of the County under the King. For it is ſaid in the Mirror, * That it appeareth by the ordinance of antient Kings before the Conqueſt, That the Earls of the Counties had the cuſtody or gard of the Counties, and when the Earls left their cuſtodies or gards, then was the cuſtody of Counties committed to Viſcounts, who therefore (as it hath been ſaid) are called Vicecomites, and Ockam cap. Quid centur. &c. Porro Vicecomes dicitur, quod vicem Comitis ſupplet.

Vide the ſecond part of the Inſtit. VV. 1. c. 10. (*) Mirror c. 1. Sect. 3. Ockam cap. Quid Centur, &c.

Marculphus ſaith, This office is, Judiciaria dignitas. Lampridius, That it is Officium dignitatis. Forteſcue ſaith, Quod Vicecomes eſt nobilis officiarius. And lo here, and obſerve well his honourable and ſolemn election and creation at this day. But to confirm all that hath been ſaid touching this point, and to conclude the ſame, among the Laws of Edward the Confeſſor, I find it thus recorded, Verum quod modo vocatur Comitatus olim apud Britones temporibus Romanorum in Regno iſto Britanniæ vocabatur conſulatus, & qui modo vocantur Vicecomites tunc temporis Vice-conſules vocabantur; ille vero dicebatur viceconſul qui conſule abſente ipſius vices ſupplebat in jure & in foro. Herein many things are worthy of obſervation: Firſt, for the antiquity of Counties. Secondly, That which we called Comitatum, the Romans more Latinly called Conſulatum. Thirdly, whom the Saxons afterwards called (as hath been ſaid) Shireve or Earl, the Romans called Conſul. Fourthly, that the Sheriff was deputy of the Conſul or Earl, and therefore the Romans called him Viceconſul, as we at this day call him Vicecomes. Fifthly, that the Sheriff in the Britains ſtile, and before, was a miniſter to the Kings Courts of Law and Juſtice, and had then a Court of his own, which was the County Court, then called Curia Conſulatus, as appeareth by theſe words, Ipſius vices ſupplebat in jure & in foro. Sixthly, that this Realm was divided into Shires and Counties, and thoſe Shires into Cities, Burroughs, and Towns, by the Britains: So that King Ælfreds diviſion of Shires and Counties, was but a renovation or more exact deſcription of the ſame. Laſtly, the conſequence that will follow upon theſe things being ſo antient, (as in the time of, and before the Romans) the ſtudious Reader will eaſily collect. And afterwards, fol. 135. among the Laws of the ſame King, it appeareth, That thoſe whom the Saxons ſometimes called (and now we call) Ældermen, or Eorles, the Romans called Senatores, Et ſimiliter olim apud Britones temporibus Romanorum in Regno iſto Britanniæ vocabantur Senatores, qui poſtea temporibus Saxonum vocabantur Aldermani, non propter ætatem, ſed propter ſapientiam & dignitatem, cum quidam adoleſcentes eſſent, juriſperiti tamen & ſuper hoc experti.

Forteſcue cap. 24. 12. R. 2. cap.

Lambert fol. 129. 12.

Cæſar. polychron. Huntingdon. Polidor inter leges Malmucii. Hooker lib. 2.

¶ *Di*

¶ *De son Bayliwick.* It appeareth before, that the Enquest must be De vicinero, of the place where the Lands do lie, and not generally De Baliva sua. By this it appeareth, That the Sheriff is Balivus, and his County called Baliva, and therefore it is good to be seen what Balivus originally signified, and whereof it is derived.

Flet.l.2.c.67. Bailife is a French word, and signifies an Officer concerning the administration of Justice of a certain Province, and because a Sheriff hath an office concerning the administration

Bract.l.3.tract.2.c.33. nu.3.Idem.l.3.fo.121.b. of Justice within his County or Bailiwick, therefore he calleth his County Baliva sua: for example, when he cannot find the Defendant, &c. he returneth, Non est inventus in Baliva mea.

Bract.l.3.156.b.Brit. fo. 56.Flet.l.2.c.63. I have heard great question made, what the true exposition of this word Balivus is. In the Statute of Magna Charta cap.28. the letter of that Statute is, Nullus Balivus de cætero ponat aliquem ad legem manifestam nec ad juramentum simplici loquela sua sine testibus fidelibus ad hoc inductis. And some have said, That Balivus in this Statute signifieth any Judg, for the law must be waged and made before the Judge. And this Statute (say they) extends to the Courts of Common Pleas, Kings Bench, &c. For they must bring with them Fideles testes &c. and so hath been the usage to this day.

But I have perused a very antient and learned reading upon this Statute, and the Reader taketh it, That at the Common Law before this Statute, he that would make his Law in any Court of Record, must bring with him Fideles testes. And this opinion herein is warranted by Glanvil, who wrote in the Reign of Henry the second. But the Reader holdeth,

Glanv.l.1.c.9. That in the Courts which were not of Record, as the County Court, the Hundred Court, the Court Baron, &c. there the Defendant without any faithful witnesses, might before this Statute have made his Law: for Remedy whereof this Act was made, and therefore (saith he) the Statute extendeth to the Judge of such Courts as are not of Record. In 10.H.4.

10.H.4.4. it is holden, That if a Lord that hath a Franchise in a Leet, doth not enquire of things enquirable, and punish them, the Sheriff shall enquire in his turn, Et si le Vicount ne faite enson

Mir.c.5.Sect.2. Vi.Bract.fo.409. Fleta l.2.c.63 56. Torne, le Bailie le Roy enquirer' quant il vient, ou autrement serra inquise pur Justice en Eire. Where Bailie le Roy is understood Justice le Roy. And in the * Mirror it is holden, That the Statute doth extend to every Justice, Minister of the King, Steward, &c. and all comprehended under this word Bailife.

The chief Magistrates in divers antient Corporations are called Bailiffs, as in Ipswich, Yarmouth, Colchester, &c. And Bailife in French, is Dioceter, Nomarcha, in English, a Bailiff or Governour. But of this thus much shall suffice.

Sect. 249.

Brit.f.185.b. acc. Bract. l.2.f.71.&c.Flet.l.5.c.9 ¶ *South son Seale, &c.* Note, The partition made and delibered by the Sheriff and Jurors, ought to be returned into the Court under the Seal of the Sheriff, and the seals of the twelve Jurors, for the words of the Judicial Writ of Partition, which doth command the Sheriff to make partition, are Assumptis tecum 12. &c. (so as there must be twelve) & partitionem inde, &c. scir' facias Justiciariis, &c. sub sigillo tuo, & sigillis eorum per quorum sacramentum partitionem illam feceris, &c.

¶ *Et de la partition que l' Vicount ad illint fait il serra notice al Justices south son Seale, & les Seales de chescun de les 12. &c. Et illint en c̄ case poies veier que leigne doer navera my la primer election, mes le Vicount luy assignera sa part que el avera, &c. Et poit estr̄ que le Vicount doit assignera primerint un part a le plus puisn, &c. & darraigniement al eigne, &c.*

And of the partition which the Sheriff hath so made, he shall give notice to the Justices under his Seal, and the Seals of every of the 12. &c. And so in this case you may see, that the eldest sister shall not have the first election, but the Sheriff shall assign to her her part which she shall have, &c. And it may be that the Sheriff will assign first one part to the youngest, &c. and last to the eldest, &c.

And this is the reason wherefore in this case the partition which they make upon oath ought to be returned under their seals: and the reason of that is for the more strengthning of the partition

tition by the 12. and that the Sheriff should not return what partition he would. Now after all this, this (&c.) viz. 12, &c. doth imply, that the principal judgment upon the partition so returned is, Ideo consideratum est per Curiam quod partitio firma & stabilis imperpetuum teneatur, the latter two (&c) are evident. L.b.11.fo.40. in Malcs case.

Sect. 250.

ET nota q̄ partition per agreement perenter parceners, poit estre fait per la ley enter eux auxibien per parol sans fait, come per fait.

AND note that partition by agreement between Parceners may be made by Law between them, as well by paroll without Deed, as by Deed.

Deed. (f) But a partition between Joyntenants is not good without Deed, albeit it be of Lands, and that they be compellable to make partition by the Statutes of 31. H 8. cap. 10. and 32 H. 8. cap. 32. becaus they must pursue that Act by Writ de partitione faciendâ, and a partition between Joyntenants without Writ remains at the Common Law, which could not be done by paroll. And so it is, and for the same reason of Tenants in common. But if two Tenants in Common be, and they make partition by Paroll, and execute the same in severalty by Livery this is good, and sufficient in Law. And therefore where Books say, That Joyntenants make partition without Deed, it must be intended of Tenants in Common, and executed by Livery.

(f) Vi. Sect. 290. 3. H. 4. 1. 19. H. 6. 25. 28. H. 6. 2. 3. E. 4. 9. 10. 47. E. 3. 22. 47. Ass. 5. 19. H. 6. 1. 17. E. 3. 46. 30. Ass. 8. Lib. 4. f. 73. Li. 6. f. 12. 13. 2 H. 7. 5. Dier 18. El. 358 31. H. 8. Dier 46. 2 Eliz. Dier 179. 28. H. 8. Di. 29 1. Mar. Dier 98.

Nota, Between Joyntenants there is a twofold privity, viz. in estate and in possession: between Tenants in Common, there is privity only in possession, and not in estate: but Parceners have a threefold privity, viz. in estate, in person, and in possession.

Sect. 251. & 252.

ITem si deux meases discendont a deux Parceners, q̄ lun mease vault per an 20. s. lauter forsque 10. s. per an, en cest cas partition poit estre fait enter eux en tiel forme, cestassavoir, que un parcener aveta lun mease, & que lauter parcener aveta lauter mease, & celuy q̄ aver le mease, que est ō value de 20. s. & ses heires, payeront un annual rent

ALSO if two Meses descend to two parceners, and the one Mease is worth twenty shillings *per ann.* and the other but ten shillings *per annum.* In this case partition may be made between them in this manner, to wit, the one Parcener to have the one Mease, and the other Parcener the other mease. And she which hath the Mease worth 20 shillings *per ann.* and her heirs shal pay

Per Parol. Nota, Here (t) a Rent may be granted for quietly of partition without Deed, eben as a Rent in case of a Lease for years, for life, or a gift in tail may be reserved without Deed, and so may a Rent be assigned to a woman out of the Land whereof she is Dowable, &c. without Deed, but albeit an exchange for Lands in the same County may be without Deed, yet (u) a Rent granted for egality of the same exchange cannot be without Deed, and the cause of the difference is apparent, for Coparceners are in by descent, and compellable to make partition.

(t) 3. E. 3. 16. 21. Ass. p. 1. 21. E. 3. 38. 11. H. 43. 61. 45. E. 3. 21. 2. H. 6. 14. 21. H. 6. 11. 1. M. Dier 97.

Le Rent, &c. The same Law is of Common of Estovers, or a Corody, or a Common of

of Paſture, &c. or a way granted upon the partition by the one Coparcener to the other. All which and the like albeit they lie in grant, yet upon the partition may they be granted without Deed.

¶ *Iſſuant hors de meſme le meaſe, &c.* (x) For if it be granted out of other lands then deſcended to the coparceners then there muſt be a Deed. (z) But if the rent be granted generally (out of no land in certain) for owelty of partition, pro reſiduo terræ, it ſhall be intended out of the purparty of her that granteth it.

(x) 1 Mariæ Dier 91.

(z) 29. Aſſ. 23. 29. E. 3. 9. b. Pl. Com. 34.

(a) If there be three Coparceners and they make partition, and one of them grant twenty ſhillings per annum out of her part to her two ſiſters, and their heirs, for egality of partition, the grantees are not jointenants of this Rent, but the Rent is in nature of coparcenary, and after the death of the one Grantee, the moiety of the rent ſhall deſcend to her iſſue in courſe of coparcenary, and not ſurvive to the other, for that the rent doth come in recompence of the Land, and therefore ſhall enſue the nature thereof, and if the grant had been made to them two of a rent of twenty ſhillings, viz. to the one ten ſhillings and to the other ten ſhillings, yet ſhall they have the rent in courſe of Coparcenary, and join in action for the ſame.

(a) 15. H. 7. 14. 29. Aſſ. 23 23. E. 3. 9. b.

(b) If one Coparcener be married, and for owelty of partition the husband and wife grant a rent to the other two out of the part of the Fem Covert, this partition being equal, ſhall charge the part of the Fem Covert for ever.

(b) 29. Aſſ. 23. 29. E. 3. 9. 27. E. 3. 10.

(c) If two Coparceners by Deed indented alien both their parts to another in fee, rendring to them two and their heirs a rent out of the Land, they are not jointenants of this rent, but they ſhall have the rent in courſe of coparcenary, becauſe their right in the land out of which the rent is reſerved, was in Coparcenary.

(c) 38. E. 3. 26. b.

¶ *Purront diſtreiner de common droit, &c.* That is (d) in this caſe the Law doth give a diſtreſs, leſt the Grantee ſhould be without remedy, for the which upon the partition ſhe hath given a valuable recompence in Land, which deſcended, &c. And ſo in the caſe of Dower abovementioned.

(d) 1. Mariæ Dier 91. 8. E. 3. 16. and other the Books aboveſaid.

Sect. 253.

¶ *Terres & Tenements, &c.* Here (&c.) impliſeth a caution, viz. that they be ſuch Lands

¶ *Et meſm̃ l'manuer eſt, de touts maners d̃ tẽrs & tene-*

IN the ſame manner it is of all manner of Lands and Tene-

ments

ments, &c. lou tiel rent eſt reſerve a un, ou a divers Parceners ſur tiel partition &c. Mes tiel rent neſt pas rent ſervice, mes eſt rent charge de cõmon droit ewe & reſerve pur egaltie de partition.

ments, &c. where ſuch Rent is reſerved to one or to divers parceners upon ſuch partition, &c. but ſuch rent is not Rent ſervice, but a rent charge of common right had and reſerved for equality of partition.

and tenements out of which a Rent for egalty of partition may be granted, whereof ſufficient hath been ſaid before.

¶ *Reſerve al un.* Here reſervation is taken for a grant, and if it be uſed upon the partition, doth amount in this caſe to a grant, which is worthy the obſervation.

Sect. 254.

¶ ET nota, que nulles ſont appelles parceners p̄ le common ley, mes females, ou les heires de females que veignõt a terres & tenemẽts p̄ diſcent. Car ſi ſoers purchaſe terres ou tenements, de ceo ils ſont appelles ioyntenants, & nemy parceners.

AND note that none are called parceners by the Common Law, but females or the heirs of females which come to lands or tenements by diſcent: for if ſiſters purchaſe lands or tenements, of this they are called Joyntenants and not parceners.

This needs no explanation.

Sect. 255.

¶ Itẽ ſi deux Parceners de terr̄ en fee ſimple, font partition enter eux, & la part de un vault pluis q̄ le part d̄ lauter, ſi els fueront al temps de la partition de pleine age, ſ̄. de 21. ans, donq̄ la partition, touts dits demurrera, & ne ſerra unques defeat. Mes ſi les tenements (dont els font partition) ſoyent a eux en fee taile, & le part que lun ad eſt

ALſo if two parceners of Land in fee ſimple make partition between themſelves, and the part of the one valueth more then the part of the other, if they were at the time of the partition of full age, ſ̄. of 21 years, then the partition ſhall alway remain and be never defeated. But if the tenements (whereof they make partition) be to them in fee tail and the part of the one

¶ *Donques le partition touts dits demurrera, &c.* Hereby it appeareth that the inequality of the value ſhall not impeach a partition made of lands in fee ſimple between coparceners of full age, no more then it ſhall do in caſe of an exchange. 9. H. 6. 5. and other the Books aboveſaid

¶ *Ils ſont concludes durant lour vies.* This inequal partition doth ſo conclude the parceners themſelves, as ſhe that hath the unequal part ſhall not avoid it during her life.

¶ *Concludes.* This word is derived of Con and Claudo, and in this ſenſe ſignifieth to cloſe or ſhut up her mouth that ſhe cannot ſpeak to the contrary.

11. Ass. p. 23.

Husband and wife tenants in special tail of certain Lands in fee have issue a daughter, the wife dieth, the Husband by a second Wife hath issue another daughter, both the Daughters enter (where the eldest is only inheritable) and make partition, the eldest daughter is concluded during her life to impeach the partition, or to say that the youngest is not heir, and yet she is a stranger to the tail, but in respect of privity in their persons, the partition shall conclude; for a partition between meer strangers in that case is void, but the issue of the eldest shall avoid this partition as issue in tail.

See after the Chapter of Garr.

(g) 21. E. 3. 34. 35. 2. E. 2. Bastardy 19. 11. Ass. 23. 30. Ass. 7. 17. E. 3. 59.

(g) I. S. seised of lands in fee hath issue two daughters, Rose and Anne, Bastards eigne, and Mulier puisne, and dieth. Rose and Anne do enter and make partition. Anne and her heirs are concluded for ever.

melieux en annual value, que est la part le iauter, coment q̄ els sont concludes durant lour vies a defeater la partition, uncore si le parcener q̄ ad le meinder part en value ad issue & deby, issue poit disagreer a la partition, & enter & occupier en common iauter part que fuit allotte a sa Aunt, & issint iauter poit enter & occupier en common iauter part allotte a sa soer, &c. sicome nul partition ust este fait.

is better in yearly value then the part of the other, albeit they be concluded during their lives to defeat the partition, yet if the Parcener which hath the lesser part in value hath issue and die, the issue may disagree to the partition, and enter and occupy in common the other part which was allotted to her Aunt, and so the other may enter and occupy in common the other part allotted to her sister, &c. as if no partition had been made.

Sect. 256.

¶ *Et lour barons.* Here it appeareth, that the wife must be party to the partition, and so are the Books* to be intended that speak of this matter.

* 42. Ass. 22. 8. E. 4. 4. 9. E. 3. 38. 15. E. 4. 20. F. N. B. 62. 29. Ass. 23. 9. H. 6. 5. 43. Ass. 14.

¶ *Et defeatera le partition.* Note, the partition shall not be defeated for the surplusage only to make the partition equal, but here it appeareth that it shall be avoided for the whole. But of this more shall be said hereafter in this Chapter, Section 264. (h) And though the partition be unequal, yet is not the partition void, but voidable, for if after the decease of the husband, the wife entreth into the unequall part, and agreeth thereunto, this shall bind, and therefore Littleton

(h) Vid. 2. E. 2. Cui in vita 17.

¶ Item si deux parceners de tenements en fee pleigne barons, & els & lour barons font partition enter eux, si la part lun est meinder en anual value que la part iauter, durant les vies lour barons la partition estoyera en sa force. Mes coment que il estoyera durant les vies les barons, uncore apres la mort le baron, celuy feme q̄ ad le meinder part poit enter en le part sa

ALso if 2 parceners of Lands in fee take husbands, & they and their Husbands make partition between them, if the part of the one be less in value than the part of the other, during the lives of their husbands the partition shal stand in its force. But albeit it shal stand during the lives of their husbands, yet after the death of the husband, that woman which hath the lesser part may enter into

soer

ſoer come eſt avantdit, & defeatera la partition.

her ſiſters part as is aforeſaid, and ſhall defeat the partition.

uſeth the word (Defeatera) which proveth it to be voidable.

Sect. 257.

¶ MEs ſi l'partition fait prenter les barons fuit tiel, que cheſcun part al temps dallotment fait, fuit de egal annual value, donque il ne poit apres eſtre defeat en tiels caſes.

BUt if the partition made between the Husbands were thus, that each part at the time of the allotment made was of equal yearly value, then it cannot afterwards be defeated in ſuch caſes.

¶ *Prenter les barons.* This is miſtaken, for the original is Perenter eux, that is, between the Barons and Femes, and not, as it is here, between the Barons, therefore this error would be hereafter reformed.

¶ *Al temps del allotment.* Hereby it appeareth, that if the parts at the time of the partition be of equal yearly value, neither the wifes nor their heirs ſhall ever avoid the ſame, and the reaſon hereof is, for that the husbands and wifes were compellable by Law to make partition, and that which they are compellable to do in this caſe by Law, they may do by agreement without proceſs of Law. If the annual value of the Land be equal at the time of the partition, and after become unequal by any matter ſubſequent, as by ſurrounding, ill husbandry, or ſuch like, yet the partition remains good. 9.H.6.5. And other the Books aboveſaid.

Judicis officium eſt, ut res ita tempora rerum
Quærere, quæſito tempore tutus eris.

But if the partition be made by force of the Kings writ, and judgment thereof given, it ſhall bind the Fem-coverts for ever, albeit the parts be not of equal annual value, becauſe it is made by the Sheriff by the oath of twelve men by Authority of Law. And the judgment is, that partition ſhall remain firm and ſtable for ever, as hath been ſaid. (a) But a partition in the Chancery where one Coparcener is of full age and ſueth Liberty, and one that is within age and hath an equal part allotted to her, this ſhall not bind her at full age, for in a Writ directed to the Eſchеator to make partition, there is a Salvo jure; And there is no judgment upon ſuch a partition. But if ſuch a partition be equal, it ſhall bind, ſo that a part of the Land holden in Capite be allotted to every of the Coparceners, for to that end there is an expreſs Proviſo in the Writ. (b) And this partition may be avoided either by Scire fac' in the Chancery, or by a Writ De partitione facienda, at the Common Law at her full age. (a) F.N.B.256.259,260 261,262,263. 9.H.6.6. 21.E.3.31.

(b) Vide 21.E.3.31.

Sect. 258.

¶ ITem ſi deux parceners ſont, & le puiſne eſteant deins lage de 21. ans, & partition eſt fait enter eux, iſſint que la purpartie que eſt allot al puiſne ē ō meindre value ꝙ la purpartie lauter, en ceſt caſe le

ALſo if two Coparceners be, & the youngeſt being within the age of twenty one years, partition is made between them, ſo as the part which is allotted to the youngeſt, is of leſs value than the part of the other before in the caſe of the Fem-Covert, (c) ſo it is in the caſe of the Infant, for if the partition be equal at the time of the allotment, it ſhall bind him for ever, becauſe he is compellable by Law to make partition, and he ſhall not have his age in a Partitione facienda, and

(c) 43.Aſſ.14. 9.H.6.52b. 7.E.3.13. 8.E.3.24. 10.H.4.5. 31.Aſſ.16. 21.H.6.25.

and though the partition be unequal, and the Infant hath the leſſer part, yet is not the partition void but voidable by his entry; for if he take the whole profits of the unequal part, after his full age, the partition is made good for ever. And therefore Littleton here giveth him a caveat, That in that caſe he take not the whole profits of his unequal part, neither ſhall an unequal partition in the Chancery bind an Infant, as appeareth before. But a partition made by the Kings Writ De Partitione facienda, by the Sheriff by the oath of twelve men, and judgment thereupon given, ſhall bind the Infant, though his part be unequal, Cauſa qua ſupra.

le puiſne durant l'tẽps de ſon nonage, & auxy quant el vient a pleine age, ſ. de 21. ans, poit enter en la purpartie a ſa ſoer allot & defeatera la partition. Mes bien ſoy gard tiel Parcener quant el vient a ſa plein age, que el ne preigne a ſon uſe demeſne touts les profits des terres ou tenements que a luy fuer allots. Car donques el ſoy agreea a le partition a tiel age, en quel caſe la partition eſtoyera & demurra en ſa force: Mes peradventure les profits de la moitie el poit prender, relinquiſant les profits de lauter moitie a ſa ſoer.

other; in this caſe the youngeſt during the time of her nonage, and alſo when ſhe cometh to full age, ſ. of 21 years, may enter into the part allotted to her ſiſter, and ſhall defeat the partition: but let ſuch parcener take heed when ſhe comes to her full age, that ſhe taketh not to her own uſe all the profits of the lands or tenements which were allotted unto her, for then ſhe agrees to the partition at ſuch age, in which caſe the partition ſhall ſtand and remain in its force: but peradventure ſhe may take the profits of the moiety, leaving the profits of the other moiety to her ſiſter.

Sect. 259.

¶ THe Law hath provided for the ſafety of a mans or womans eſtate, that * before their age of twenty one years they cannot bind themſelves by any Deed, or alien any land, goods, or chattels.

* Vid. Sect. 402. 403.

¶ *Age de 21 ans.* Before this age a man or woman is called an Infant.

Brit. fo. 65. ff. & 101. Flet. l. 3. c. 14.

¶ *Fait.* Factum, Anglicè, a Deed, and ſignifieth in the Common Law, an Inſtrument conſiſting of three things, viz. Writing, Sealing, and Delivery, comprehending a bargain or contract between party and party, man or woman. It is called of the Civilians Literarum obligatio.

¶ *Feoffement.* Of this word ſufficient hath been

¶ Et ceſt aſcavoir, que quant il eſt dit, que males ou females ſont de pleine age, ceo ſerra entendue d'age de 21 ans, car ſi devant tiel age, aſcun fait ou feoffement, grant, releaſe, confirmation, obligation, ou auter ſcripture ſoit fait per aſcun de eux, &c. ou ſi aſcun deins tiel age, ſoit Bailiff ou receiver a aſcun home, &c, tout ſerve pur nient, & poit eſte avoide.

AND it is to be underſtood, that when it is ſaid, That males or females be of full age, this ſhall be intended of the age of 21 years, for if before ſuch age any deed or feoffement, grant, releaſe, confirmation, obligation, or other writing be made by any of them, &c. or if any within ſuch age be Bailiff or Receiver to any man, &c. all ſerve for nothing, and may be avoided. Al-

Auxy

Auxy home devant le dit age, ne serra my iure en un Enquest, &c.

so a man before the said age shall not be sworn in an Enquest, &c.

said before in the first Chapter of the first Book.

¶ *Grant.* Concessio is in the Common Law a conveyance of a thing that lies in Grant, and not in Livery, which cannot pass without Deed, as Advowsons, Services, Rents, Commons, Reversions, and such like. Of this also sufficient likewise hath been said in the first Chapter of the first Book. Lib.3.fo 63.in Lincols Colledge case.

¶ *Release, Confirmation, &c.* Of these shall be spoken hereafter in their proper places and Chapters.

¶ *Obligation,* is a word of his own nature, of a large extent, but is commonly taken in the Common Law for a Bond containing a penalty with condition for payment of mony, or to do, or suffer some act or thing, &c. and a Bill is most commonly taken for a single Bond without condition.

¶ *Or auter scripture soit fait per ascun de eux, &c.* Here by this (&c.) is implied some exceptions out of this generality, (d) as an Infant may bind himself to pay for his necessary meat, drink, apparel, necessary physick, and such other necessaries, and likewise for his good teaching or instruction, whereby he may profit himself afterwards: but if he bind himself in an Obligation or other Writing, with the penalty for the payment of any of these, that Obligation shall not bind him. (e) Also other things of necessity shall bind them, as a presentation to a Benefice, for otherwise the Laps shall incur against him. Also if an Infant be an Executor upon payment of any debt due to the Testator, he may make an acquittance, but in that case a release without payment is void, and generally whatsoever an Infant is bound to do by Law, the same shall bind him, albeit he doth it without suit of Law. But of this common learning this little taste shall suffice. (d)18.E.4.2.21.H.6.31 Lib.9 fo.87.Pinchons case. (e) 8.E.4.4. 9.H 6.5. 17.E.3.9. 29.Ass.25. 2.Mariæ Dyer.104.105.

¶ *Bailiff or Receiver al ascun home, &c.* By this (&c.) many things are implied, as that by Bailiff is understood a servant that hath administration and charge of lands, goods, and chattels, to make the best benefit for the owner, against whom an action of account doth lie for the profits which he hath raised or made, or might by his industry or care have reasonably raised or made, his reasonable charges and expences deducted. (f) But one under the age of twenty one years shall not be charged in any such account, because by intendment of Law, before his full age he hath not skill and ability to raise or make any such improvement and profit. Fleta l.2.c.64. & c.67. Britton fo.62.70. Fleta l.2.c 64. 41.E.3.39. 46.E.3. Account 40. 2.R.2. ib.45. 6.R.2.ib. 3.E.3.10. (f)13.E.3.Infat.9.17.E.2 Account 121. 21.E.3.8. 10.H.4.14. 2.H.4.13. Regist 135.

An account against a Receiver is when one receiveth mony to the use of another, to render an account, but upon his account he shall not be allowed his expences and charges. (g) And therefore a man cannot charge a Bailiff as a Receiver, because then the Bailiff should lose his expences and charges. g)43.E.3.31.46.E.3.3.b 4.H.6.27.

In an account against a Receiver, the Plaintiff must declare by whose hands the Defendant received the mony, which he shall not do in the case of a Bailiff. (h) But in some case in an action of Account against one as Receptor denariorum, he shall have allowance of his expences and charges, and also shall account for the profit he received, or might reasonably receive, and this was provided by Law in favour of Merchants, and for advancement of trade and traffick. (h)30.E.1.Account 127 47.E.3.22. 10.H.7.16. Bra[illegible]5.f.334.Bri.f.62. Fl[illegible].c.64. & 51. 5.[illegible]. Lib.Intrat.17.18.19.

As if two joynt Merchants occupy their stock, goods, and merchandizes in common to their common profit, one of them naming himself a Merchant, shall have an account against the other naming him a Merchant, and shall charge him as Receptor denariorum ipsius B. ex quacunque causa & contractu ad communem utilitatem ipsorum A. & B. provenien' sicut per legem mercatoriam rationabiliter monstrare poterit.

(i) If there be two Joyntenants or Tenants in Common of Lands, and the one make the other his Bailiff of his moiety he shall have an action of Account against him as Bailiff: And so are the Books to be intended, that speak of an action of account in that case. (i)45.E.3.10.3.E.3.27. 39.E.3.27.47.E.3.22. F.N.B. 118.

So as there be but three kinds of writs of Account, viz. against one as Gardian, whereof Littleton hath spoken before in the Chapter of Socage. The second against one as Bailiff: And the third, as Receiver, as here it appeareth. (k) For a man shall not be charged in an Account as Surveyor, Comptroller, Appprentice, Reve, or Heyward. And to maintain an Action of Account, there must be either a privity in deed by the consent of the party, for (l) against a Disseisor or other wrong doer no account doth lie, or a privity in Law ex provisione legis, made by the Law as against a Guardian, &c. whereof sufficient hath been spoken in the Chapter of Socage. (k) 13.E.3.Account 76. 41.E.3.ibid.34. 8.E.3.40. 8.R.4.6.b. F.N.B.119.d. (l)2.Mar.B.Account 89 F.N.B.117.Pl.Com.542 2 H.4.12.33.H.6.2.4.E. 7.6.&c.

¶ *Ne*

¶ *Ne ſerra jure en un Enqueſt, &c.* By this (&c.) is implied a maxim in Law, (m) Quod minor jurare non poteſt. For example, (n) An Infant cannot make his Law of Non ſummons; (o) And therefore the default ſhall not grieve him, for ſeeing the mean to excuſe the default is taken away by Law, the default it ſelf ſhall not prejudice him. But yet this rule hath an exception, That (p) an Infant when he is at the age of 12 years ſhall take the Oath of Allegiance to the King: and this was, as Bracton ſaith, Secundum leges Sancti Edwardi. But indeed ſuch was the Law in the time of King Arthur, (q) An Infant cannot upon his Oath make his Law in an action of debt. (r) And the husband and wife of full age for the debt of the wife, before the coverture ſhall make their Law.

(m) Bract. l. 5. fo. 340. b.
(n) 13. E. 3. Ley 150.
(o) 26. E. 3. 63. 2. Mariz Dier 104. 105.
(p) Vid. Devant. cap. de Homage & ca. de Fealty Sect. 85. 91. Bract. l. 2. f. 124. Britton fo. 73. 74. & fo. 19. Fleta l. 1. c. 27.
(q) 11. H. 6. 40. 1. H. 7. 25 35. E. 4. 2.
(r) 46. E. 3. 10. 9. E. 4. 24. 35. E. 4. 2. 21. H. 3. 23.

Sect. 260.

¶ *A terre en fee ſimple eſt allot a la file puiſne.* It is firſt to be obſerved upon this whole caſe, that the fee ſimple land is allotted to the youngeſt daughter, and the land entailed to the eldeſt. This partition prima facie is good, and herein the partition differeth from the exchange, wherein the exchange the eſtates muſt be equal.

But yet this partition by matter ſubſequent may become voidable, (as Littleton here puts the caſe) the eldeſt copartener hath by the partition and the matter ſubſequent barred her ſelf of her right in the fee ſimple lands, inſomuch as when the youngeſt ſiſter alieneth the fee ſimple lands and dieth, and her iſſue entreth into half the lands entailed, yet ſhall not the eldeſt enter into half of the lands in fee ſimple upon the Alienee, for by the alienation, the privity of the eſtate is deſtroyed.

¶ *Le puiſne file alien la terre en fee ſimple, &c.* The ſame law it is if the youngeſt daugh-

¶ Item ſi terres ou tenements ſoyent dones a un home en le taile, quel ad tant des terres en fee ſimple, & ad iſſue deux files & devie, & ſes deux files font partition enter eux, iſſint que la terre en fee ſimple eſt allot a la file puiſne en allowance des terres & Tenements tailes allottes a la file eigne, ſi apres tiel partition fait, la puiſne file alienaſt ſa terre en fee ſimple a un auter en fee, & ad iſſue fits ou file & devie, iſſue poit bien entrer en les Tenemẽts tailes & eux tener & occupier en purpartie ouesque ſon Aunt. Et ceo eſt pur deux cauſes: un eſt, pur ceo que iſſue ne poit aver aſcun remedie de la terre aliẽ p ſa mere, pur ceo que la terre fuit a luy en fee ſimple, & pur tant que il eſt un de les heires en taile, & nad my aſcun recompence de ceo que a luy affiert de les Tenements tailes, il eſt

Alſo if Lands or Tenements be given to a man in tail, who hath as much land in fee ſimple, and hath iſſue two daughters and die, and his two daughters make partition between them, ſo as the Land in fee ſimple is allotted to the younger daughter, in allowance for the Lands and Tenements in Tail allotted to the elder Daughter, if after ſuch partition made, the younger Daughter alieneth her Land in Fee ſimple, to another in fee, and hath iſſue a Son or Daughter and dies, the iſſue may enter into the Lands in Tail and hold and occupy them in purparty with her Aunt. And this is for two cauſes: one is, for that the iſſue can have no remedy for the Land ſold by the Mother, becauſe the Land was to her in Fee ſimple, and in as much as ſhe is one of the Heirs in Tail, and hath no recompence of that which belongeth to her of the Lands in Tail, it is reaſon

reaſon

reason que el eit sa purparty ō les teñts tailes, & noseinement quant tiel partition ne fait ascun discontinuance.

¶ Mes le contrary est tenus M. 10. H. 6. s. que le heire ne poit enter sur l'Parcener que ad la terre taile, mes est mis a Formedon. *

that she hath her portion of the Lands tailed, and namely when such partition doth not make any discontinuance.

¶ But the contrary is holden *M.* 10. *H.* 6. s. that the Heir may not enter upon the Parcener who hath the intailed Land, but is put to a *Formedon.** tet had made a gift in tail, for the Reversion expectant upon an estate tail is of no account in Law, for that it may be cut off by the Tenant in Tail. Otherwise it is of an estate for life or years. If in this case the youngest Daughter alien part of the Land in Fee simple and dieth, so as a full recompence for the Land entailed descends not to her issue, she may wave the taking of any profits thereof, and enter into the Land entailed, for the issue in tail shall never be barred without a full recompence, though there be a warranty in Deed, or in Law descended.

If on the other side the eldest Coparcener alien the Land entailed and dieth, her issue shall have a Formedon alone for the whole land entailed, for so long as the partition continueth in force, she is only inheritable to the whole Land entailed.

¶ *Et nad my ascun recompence.* This is intended, as it appeareth, of a full recompence.

¶ *Tiel partition ne fait ascun discontinuance.* And the reason thereof is, for that it passeth not by Livery of seisin, but the partition is in truth less than a grant, for that it maketh no degree, but each Coparcener is in by descent from the common Ancestor. See more of this in the Chapter of discontinuance. Section.

¶ *Mes le contrary est tenus, &c.* This is no part of Littleton, and is contrary to Law, as appeareth by Littleton himself, and besides, the case intended is not truly vouched, for it is not in 10. H 6. and yet there it is but the opinion of Newton, obiter, by the way. 20. H. 6. 14.
Vide F. tit. part 1.

§

Sect. 261.

UN auter cause ē, pur ceo q̄ il serra ceēt la folly del eigne soer que el voit suffer ou agree a tiel partition, ou el puissoit aver si el voile, la moitie de la terre en fee simple, & son moitie des tenements en le taile, pur say purparty, & issint estre sure sans damage.

ANother reason is, for that it shall be accounted the folly of the eldest sister, that she would suffer or agree to such a partition, where she might if she would have had the moiety of the Land in Fee simple, and a moity of lands entailed for her part, and so to be sure without loss.

¶ *Un auter cause, &c.* This is another reason to prove that by the partition the eldest daughter hath concluded her self, as is aforesaid.

¶ *Son moitie des terres en le taile.* For if a writ of Partition had been brought, the eldest should not have been compelled to take the whole estate in tail, for the prejudice that might after ensue, but might have challenged the one moity of the Lands in tail, and another moity of the Lands in Fee simple, and this she might do ex provisione legis. But when she will not submit her to the policy and provision of the Law, but betake her self to her own policy and provision, there the Law will not aid her, as here by Littleton manifestly appeareth. And so it is in the other case, (*) As if a man be seised of three Mannors of equal value in fee, and taketh wife, and chargeth one of the Mannors with a Rent charge, and dieth, she may by the provision of the Law take a third part of all the Mannors and hold them discharged, but if she will accept the entire Mannor charged, it is holden that she shall hold it charged. (*) 26. E. 3. dower 133. 17. E. 2. tit. dower 164. 18. H. 6. 27.

Dier 1. Mar. 98.

A partition of Lands intailed between Parceners, if it be equal at the time of the partition shall bind the issues in tail for ever, albeit the one do alien her part.

But here it may be demanded, that seeing Littleton saith, that it shall be taken to be the folly of the eldest Parcener, &c. what if so be the eldest did not know of the estate tail either in respect of the antiquity thereof, or for want of having of the evidence, or for any other cause, what folly can be imputed to her?

The answer is, That it is presumed in Law, that every one is comisant of her right and title to her own Land; and on the other side it should be arrested great folly in her to be ignorant of her own title. And therefore the reason of Littleton doth firmly hold.

Sect. 262.

BEfore it appeareth, that when the privity of the estate is destroyed by the feoffment of one Coparcener, that upon ebition of a moiety by force of an entail against the other she shall not enter upon the alienee. But in this case that Littleton here putteth, when the privity of the state remaineth, and the part of the one is ebicted, (*) she shall enter and hold in coparcenary with her other coparcener, and so it is in the case of an exchange. By reason of the (&c.) in the end of this Section, there may two questions be justly demanded; what if the whole estate in part of the purparty of one parcener be ebicted by a title paramount? whether is the whole partition avoided, for that Littleton here putteth the case that the whole purparty of the one is defeated?

The second question is, whether if but part of the state of one Coparcener be ebicted, as an estate in tail, or for life, leading a reversion in the Coparcener, whether that shall avoid the partition in the whole?

To the first it is answered, that if the whole estate in part of the purparty be ebicted, that shall avoid the partition in the whole, be it of a Mannor, that is entire, or of acres of ground, or the like that be several, (n) for the partition in that case implyeth for this purpose both a warranty and a condition in Law, and either of them is entire, and giveth an entry in this case into the whole. And so hath

(*) 15. E. 4. 3. 2. per Littleton, lib. 4. fo. 121. 122. Bastards Case.

(n) 13. E. 4. 3. 42. Ass. 22.

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Cary si home soit seisie en fee dun carve de terre per iust title, q̄ disseisist un enfāt deins age dun auter carve, & ad issue deux files, & mozust seisie dambideux carves, lenf. adonqz esteant deins age, & les files entront & font partition, ilsint q̄ lun carve est allotte al purparty lun, come per case al puisne en allowāce dauter carve que est allotte a le purparty de lauter, si puis lenf. enter en le carve dont il fuit disseisist sur l' possession la Parcener que ad meisne le carve, donqz n̄ le Parcener poit entrer en lauter carve que sa soer ad, & tener en Parcenary ouesqz luy: Mes si le puisne aliena n̄ la carve a un auter en fee simple devant lenter lenf. & puis lenf. enter sur le possession lalienee, don-

ALso if a man be seised in fee of a carve of Land by just title, and he disseise an Infant within age, of another Carve, and hath issue two daughters, and dieth seised of both Carves, the infant being then within age, and the Daughters enter and make partition, so as the one Carve is allotted for the part of the one, (as per case to the youngest in allowance of the other Carve which is allotted to the purparty of the other) if afterward the Infant enter into the Carve whereof he was disseised upon the possession of the Parcener which hath the same Carve, then the same parcener may enter into the other Carve which her sister hath, and hold in Parcenary with her. But if the youngest alien the same Carve to another in fee before the entry of

que

que el ne poit enter en lauter carve, pur ceo que per son alienation el ad luy tout ousterment dismisse daver ascun part de les tenements come parcener. Mes si le puisne devant lentrie lenfant fait de ceo un lease pur terme dans, ou pur terme de vie, ou en fee taile, savant la reversion a luy, & puis lenfant enter, la paraventure auterment est, pur ceo que el ne soy dismisse de tout ceo que fuit en luy, mes ad reserve a luy le Reversion & le fee, &c.

the Infant, and after the Infant enter upon the possession of the Alienee, then she cannot enter into the other Carve, because by her alienation she hath altogether dismissed her self to have any part of the Tenements as parcener. But if the youngest before the entry of the Infant make a Lease of this for term of years, or for term of life, or in Fee tail saving the reversion to her, and after the Infant enter, there peradventure otherwise it is, because she hath not dismissed her self of all which was in her, but hath reserved to her the reversion, & the fee, &c.

it been lately resolved (o) both in the case of exchange and of the partition.

(c) Bastards case. Lib. 4. fo. 121.

To the second, if any estate of freehold be vested from the Coparcener in all or part of her purparty, it shall be avoided in the whole. As if A. be seised in fee of one acre of Land in possession, and of the reversion of another expectant upon an estate for life, and he disseise the Lessee for life who makes continual claim. A. dieth seised of both Acres, and hath Issue two Daughters, partition is made, so as the one Acre is allotted to the one, and the other Acre to the other, the Lessees enter, the partition is avoided for the whole, and so likewise hath (p) it been lately resolved.

(p) Bastards case ubi supra.

(q) Yet there is a diversity between the warranty, and the condition which the Law createth upon the partition where one Coparcener taketh benefit of the condition in Law she defeateth the partition in the whole.

(q) Vide 5. E. 3. tit. voucher, 249.

But when she voucheth by force of the warranty in Law for part, the partition shall not be defeated in the whole, but she shall recover recompence for that part. And therein also there is another diversity between a recovery in value by force of the warrant upon the exchange and upon the partition; for upon the exchange he shall recover a full recompence for all that he loseth: But upon the partition she shall recover but the moity or half of that which is lost, to the end that the loss may be equal.

Many other diversities there be between exchanges and partitions, for there are more and greater privities in case of partition in persons, blood, and estates, than there is in exchanges, all which were too tedious to rehearse in this place, seeing so much as hath been said herein is sufficient for the explanation of the cases of partition which Littleton hath put.

18. E. 2. tit. ai. 171. 19. H. 6. 26.

¶ *Dongues el ne poet enter en lauter carve, &c.* By this is also approved that which hath been often said before, that when the whole privity between Coparceners is destroyed, there ceaseth any recompence to be expected either upon the condition in Law, or warranty in Law by force of the partition.

¶ *Per son alienation il ad luy tout ousterment dismisse daver ascun part de les tenements come parcener.* Hereupon it followeth, that if one Parcener maketh a feoffment in fee, and after her feoffee is impleaded and voucheth the feoffor, (r) she may have aid of her Coparcener to deraign a warranty Paramount, but never to recover pro rata against her by force of the warranty in Law upon the partition, for Littleton here saith, that by her alienation she hath dismissed her self to have any part of the Land as Parcener. And without question as Parcener she must recover pro rata, upon the warranty in Law against the other Parcener.

(r) 41. E. 3. 24. 11. H. 4. 22. 23. 14. E. 3. aid. 24.

And yet in some case the feoffee of one Coparcener shall have aid of the other Parceners to deraign the warranty paramount, and therefore (a) if there be two Coparceners, and they make partition, and the one of them infeoffes her Son and Heir apparent and dieth, the Son is impleaded, albeit he be in by the feoffment of his Mother, yet shall he pray in aid of

(a) 43. E. 3. 23. Pl. Com. 4. E. 3 15. 5. E. 3. 7. 38. E. 3. 17, &c.

(b) 32.E.1.tit. Aid 178. 3.E.2.ibid.163. the other Coparcener to have the warranty Paramount; and the reason (b) of the granting of this aid is for that the Warranty between the Mother and the Son is by Law annulled, and therefore the Law giveth the Son aid albeit he be in by feoffment to pray in aid of the other parcener, to deraign the Warranty Paramount, wherein is to be observed the great equity of the Common Law in this case:

Ipsæ etenim leges cupiunt ut jure regantur.

(*) 2.H.6.16. (*) But if a man be seised of Lands in fee, and hath issue two daughters and make a gift in tail to one of them, and dis seised of the reversion in fee which descends to both sisters, and the Donee or her issue is impleaded, she shall not pray in aid of the other Coparcener either to recover Pro rata, or to deraign the Warranty Paramount, for that the other sister is a stranger to the state tail, whereof the eldest was sole Tenant, and never partition was or could be thereof made.

¶ *Mes si le puisne devant létrie lenfãt fait de ceo un lease, &c. ou en fee taille savant le reversion a luy, &c.* This (upon that which hath been said) needeth no explanation. Only this is to be observed, that albeit it is in the power of tenant in tail to cut off the reversion, yet if the infant enter before it be cut off, the Law hath such consideration of this reversion, that she that loseth it shall enter into her sisters part, and hold with her in Coparcenary, for that the privity between them was not wholly destroyed.

Sect. 263.

¶ Item si soiẽt trois ou quater parceners, &c. q̃ font partition enter eux, si le part dun parcener soit defeat p̃ tiel loyal entrie, el poit enter & occupier lauter terres ouesq̃ touts les auters parceners, & eux compell' de faire novel partition de lauters terres, enter eux, &c.

ALso if there be three or four Coparceners, &c. which make partition between them, if the part of the one parcener be defeated by such lawful entry, she may enter and occupy the other Lands with all the other parceners, and compel them to make new partition between them of the other Lands, &c.

¶ *Inter eux, &c.* This (&c.) implieth that so it is between the surviving Parceners and the heirs of the other, or between the heirs of Parceners, all being dead.

Sect. 264.

¶ *Le Baron soy tient eins cõe tenant per le curtesie.* This is no relectance of the state in Coparcenary, (b) for the other Coparcener and the tenant by the Curtesie shall be jointly impleaded, for he doth continue the state of Coparcenary, as the other Parcener did.

(b) 24.E.3.29.31.E.3. Brief 339. 9.E.4.13. 29.H.6.26. 3.H.6. Aff.1. 37.H.6.8. 21.E.3.14.

¶ *Vers le tenant*

¶ Item si sont deux parceners, & lun prent baron, & le baron & sa feme ont issue enter eux, & la feme deby, & le baron soy tient eyns en le moity cõ tenãt per le curtesie, en ceo cas le parcener q̃ survesquist, & le tenant per le curtesie bien poiẽt faire par-

ALso if there be two parceners and the one taketh Husband, and the Husband and Wife have issue between them, and his Wife dieth, and the Husband keeps himself in as tenant by the curtesie: In this case the Parcener which surviving

tition

tition enter eux, &c. Et ſi le tenant per le curteſie ne voit agreer al partition deſire fait, donques le parcener que ſurveſquiſt poit aver envers le Tenant per le curteſie, briefe De partitione facienda, &c. & luy cõpeller de faire partition. Mes ſi le Tenant per le curteſie voile aver partition enter eux deſire fait, et le parcener que ſurveſquiſt ne voit ceo aver, donque le tenant per le curteſie navera aſcun remedy pur aver partition, &c. Car il ne poit aver briefe de Partitione facienda, pur ceo que il neſt parcener, car tiel briefe giſt pur parceners tantſolement. Et iſſint poyes beyer que briefe de Partitione facienda giſt envers tenant per le curteſie, & uncore il meſme ne poit aver tiel briefe.

veth, and the tenant by the curteſie may well make partition between them, &c. And if the tenant by the curteſie will not agree to make partition, then the parcener which ſurviveth may have againſt the tenant by the curteſie a writ *De partitione facienda, &c.* and compel him to make partition. But if the tenant by the curteſie would have partition to be made between them, and the parcener which ſurviveth will not have this, then the tenant by the curteſie cannot have any remedy to have partition, &c. For he cannot have a writ of *partitione facienda*, becauſe he is no parcener. For ſuch a Writ lieth for parceners only. And ſo you may ſee that a writ of *partitione fac'* lieth againſt tenant by the curteſie, and yet he himſelf cannot have the like Writ.

per le curteſie brief de partitione faciendâ, &c. Here by the &c. is implied that albeit that the Tenant by the curteſie be an ſtranger in blood, yet the (c) Writ De partitione fac' clearly lies againſt the tenant by the curteſie, becauſe he continueth the eſtate of Coparcenary. (c) 3.E.3 47. 9.E.3.13. 16.E.3.Aid.129. 19.E.3.ibid.144.

If two Coparceners be, and one doth alien in fee, they are tenants in common, and ſeveral writs of Præcipe muſt be brought againſt them and yet the Parcener ſhall have a writ of partition againſt the alienee at the Common Law, which is a far ſtronger caſe then the caſe put of Tenant by the Curteſie. 28.E.3.5.

¶ *Tiel briefe giſt pur Parceners tantſolement.* Hereby it appeareth that neither the Tenant by the curteſie, nor (much leſs) the Alienee of a Coparcener ſhall have a writ of Partitione fac' at the Common Law, for Littleton ſaith here, that ſuch a Writ lieth only for Parceners, but it may be brought by a Parcener againſt ſtrangers, as it appeareth before. But a Nuper obiit, and a Rationabile parte do lie only between two Coparceners on both ſides. (*) 3.E.47.48.

If three Coparceners be, and the eldeſt doth purchaſe the part of the youngeſt, the eldeſt having one part by deſcent, and the other by purchaſe ſhall have a writ of Partition at the common law againſt the other middle ſiſter, & ſic de ſimilibus. And ſo it is in a far ſtronger caſe, if there be three Coparceners, and the eldeſt taketh husband, and the husband purchaſe the part of the youngeſt, the husband for his part is a ſtranger, and no Parcener, and yet he and his wife ſhall have a Writ of partition againſt the middle ſiſter at the Common Law, becauſe he is ſeiſed of one part in the right of his wife who is a Parcener. Dier 1.Maria 98. F.N.B. 52.Regiſtr.

¶ *Pur aver Partition, &c.* Here by this (&c.) is included all others that be ſtrangers in blood, whether they come to their eſtates by purchaſe or by act in Law. Since Littleton wrote, by the Statutes (d) one Joyntenant or Tenant in common may have a Writ of Partition againſt the other, and therefore at this day the Alienee of one Parcener may have a Writ of Partition againſt the other Parcener, becauſe they are Tenants in common: and the like had been attempted in former Parliaments (*) but prevailed not until theſe latter Statutes. (d) 31.H.8.c.1. 32.H.8.c.32. Vide Sect.290. (*) Rot.Parl.1.R.2. nu. 82.

(e) The Tenant by the Curteſie ſhall have a Writ of Partition upon the Stat. of 31.H.8. cap.32. (e) Brook tit. Partition 41.

cap. 32. for albeit he is neither Jointenant nor Tenant in Common, for that a Præcipe lieth against the Parcener and Tenant by the Curtesie, as hath been said, yet he is in equal mischief as another Tenant for life.

(f) Mich. 7. & 8. Eliz. Bendloes inter Wotton & Cooke. Dier 3. Mariæ 128. A. & 7. Eliz. 243.

(f) If there be three Coparceners, and a stranger purchase the part of one of them, he and one other of the Coparceners shall not join in a Writ of Partition, neither by the Common Law, nor by force of the Statute, for the words of the Preamble of the Statute be (And none of them by the Law doth or may know their several parts, &c. and cannot by the Laws of this Realm make partition thereof, without other of their mutual assents, &c.)

Now in this case the one of the Plaintiffs, viz. the Parcener may have a writ of Partition at the Common Law, and the other Parcener being a purchaser may have it by the Statute, and therefore they shall not join in one Writ.

Chap. 2. Parceners by Custom. Sect. 265.

See before all the Antient Authors of the Law concerning Gavelkind, ubi supra. Lambert verbo Terra exscript.

¶ *Mes il covient en le Declaratiõ de faire mention de le custome.* Well said Littleton, (g) That he in his Declaration must make mention of the Custom, as to say, That the Land is of the custom of Gavelkind, but he shall not prescribe in it. And so is it of Burgh English, and these two vary in that point from other customs, for the Law, when they are generally alledged, taketh knowledge of these two.

(g) 5. E. 4. 8. b. 21. E. 4. 56. b. Plo. Com. 129. b. in Buckleys case. Vide Lect. 8. versus finem.

¶ Parceners p le custome sont lou home seisie en fee simple, ou en fee taile d terrs ou tenements q̃ sont d tenur̃ appel Gavelkind deins l' County de Kent, e ad issue diõs fits e debie, tielx terrs ou tenements discenderont a touts les fits per le custome, e uelment enheriteront e ferront ptition enter eux per le custome, si come females ferront, e hõe de Partitione facienda gist en ceo cas, si come enter females, mes il covient en la declaration de faire mention de l' custome. Auxy tiel custome est en auters lieux Dengleterr̃. Et auxi tiel custome est en North Gales, &c.

Parceners by the Custom are, where a man seised in fee simple, or in fee tail of Land, or Tenements which are of the Tenure called Gavelkind within the County of Kent, and hath issue divers Sons and die, such Lands or Tenements shall descend to all the Sons by the Custom, and shall equally inherit and make partition by the custom, as females shall do, and a writ of Partition lieth in this case as between females, but it behooveth in the Declaration to make mention of the Custom. Also such Custom is in other places of England, and also such Custom is in North-Wales, &c.

(h) Berocheſcire: Hereford.

¶ *Auxy tiel custom est en auters lieux Angleterre.* Of this sufficient hath been said before.

¶ *North Gales.* Wales, Wallia, It cometh (i) of the Saxon word Wealh which signifieth peregrinus, or exterus, for the Saxons so called them, because in troth they were strangers to them, being the remain of the old and antient Britans, a wise and warlike Nation, inhabiting in the west part of England. These men have kept their proper language for above these thousand years past, and they to this day call us Englishmen, Saisons, (that is) Saxons. And the like Custom as our Author here saith, was in North-Wales, was also in Ireland, for there the Lands also (which is one mark of the antient Britans) were of the nature of Gavelkind: but where by their Brehon Law the Bastards

(i) Lamb. verb. Welshmen Silvester Giraldus.

ſtards inherited with their legitimate ſons, as to the Baſtards that cuſtom was abolished. And agreeing with Littleton in this point, ſee an old Statute; * Aliter uſitatum eſt in Wallia, quam in Anglia, quoad ſucceſſionem hæreditatis, eo quod hæreditas partibilis eſt inter hæredes maſculos, à tempore cujus non extitit memoria partibilis extitit, Dominus Rex non vult quod conſuetudo illa abrogetur, ſed quod hæreditates remaneant partibiles inter conſimiles hæredes ſicut fieri conſuevit, & fiat partitio illius ſicut fieri conſuevit. Vide Sect. 212. *Stat. Wall. an. 12. E. 1.

¶ *Parceners per le Cuſtom, &c.* Well ſaid Littleton, By the Cuſtom, for Sons are Parceners in reſpect of the cuſtom of the Fee or Inheritance, and not in reſpect of their perſons, as daughters and ſiſters, &c. &c. (h) Et ſunt participes quaſi partem capientes, &c. ratione ipſius rei quæ partibilis eſt, & non ratione perſonarum, quæ non ſunt quaſi unus hæres, & unum corpus, ſed diverſi hæredes, ubi tenementum partibile eſt inter plures cohæredes petentes qui deſcendunt de eodem ſtipite & ſemper ſolent dividi ab antiquo. (h) Bract. l. 5. fo. 428. Brit. cap. 71. Flet. l. 5. cap. 9.

Sect. 266.

¶ Item il y ad auꝫ partiꝯ quel eſt dauter nature et dauter forme que aſcuns des partitiõs avantdits ſont. Sicome home ſeiſie de certain Terres en fee ſimple, ad iſſue deux files & leigne eſt mary, & le piere dona parcel de ſes terres a le baron oue ſa file en frankmarriage, & mozuſt ſeiſie õ le remnant, le quel remnant eſt de pluis greinder value per an, q̃ ſont les terres dones en Frankmariage.

ALſo there is another partition which is of another nature, and of another form, then any of the partitions aforeſaid be. As if a man ſeiſed of certain Lands in Fee-ſimple, hath iſſue two daughters, and the eldeſt is maried, and the father giveth part of his Lands to the husband with his daughter in Frankmarriage, and dieth ſeiſed of the remnant, the which remnant is of a greater yearly value then the lands given in Frankmarriage.

¶ *Dona parcel de ſes terres a le Baron oue ſa file en frankmarriage.* Here it appeareth, that a gift in frankmarriage may be made after marriage, as hath been ſaid in the Chapter of Fee tail.

¶ *Le quel remnant eſt de pluis greinder value per an, &c.* Admit that the Lands given in frankmarriage are of greater value than the Lands deſcended in Fee-ſimple, ſhall the other ſiſter have any remedy againſt the Donees? it is plain ſhe ſhall not, becauſe it is lawful for a man to diſpoſe of his own Lands, at his will and pleaſure.

Sect. 267.

¶ En cel caſe le baron ne le fẽe avera riens pur lour purpartie de le dit remnant, ſinon que ils voile mitter lour tres dones en frankmariage en Hotchpot ouesque le rem-

IN this caſe neither the husband nor wife ſhall have any thing, for their purparty of the ſaid Remnant, unleſs they will put their Lands given in Frankmarriage, in Hotchpot, with the remnant of the

¶ *En cel caſe le Baron ne le Feme avera riens pur lour purpartie, &c.* (i) This gift in frankmariage ſhall prima facie be intended a ſufficient advancement, and therefore the remnant ſhall deſcend to the other Coparsener only with this proviſion in Law tacite annexed, that if the do-

(i) 8. H. 3. breve 880. 34. E. 1. nuper obiit. 15. adjudge. 4. E. 3. 49. 10. Aſſ. p. 14. Vi. 10. E. 3. 38. & 30. aſſ 7 Bract. l. 2. fo. 77. Lib. 5. fo. 428. Brit. c. 72. Fleta l. 6. c. 47.

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nees will put the Land into Hotchpot, then she shal out of the remnant make up her part equal, but the Donees must do the first act, and in the mean time the whole fee-simple land descends to the other. And this is warranted here by Littleton, viz. that the Donees shall have nothing for the purparty of the remnant, unless they will put their lands given in Frankmatriage, in Hotchpot, so as the Donees must do the first act, and more expresly after in this Chapter, where he directly saith, That the other sister shall enter into the remnant, and them to occupy to her own use, unless the husband and wife will put the Lands given in Frankmarriage into Hotchpot. And herewith agreeth Fleta, who saith, Cum dicat tenens excipiendo, quod non tenetur petenti respondere, quia A. participem habet, &c. replicari poterit à petente quod prædict' A. tenet quandam partem in maritagium de communi hæreditate, nec vult illud in partem ponere. And here are three things (that I may speak once for all) to be observed. First, that

nant de la terre ouesq; sa soer. Et si illint ils ne voilent fayre, donqs le puisne poet tener & occupier m le remnande, & prendra a luy les profits tantsolement. Et il semble que cest parol (Hotchpot) est en English, A Pudding, car en tiel Pudding nest communement mise un chose tantsolemt, mes yn chose ouesq; auts choses ensemble. Et pur ceo il covient en tiel case de mitter les Terres Donees ẽn frankmariage ouesque les auters terres en Hotchpot, si le Baron & sa feme voilent aver ascun en les auts fees.

land with her sister. And if they will not do so, then the youngest may hold and occupy the same remnant, and take the profits only to her self. And it seemeth that this word (Hotchpot) is in English, A Pudding, for in this Pudding is not commonly put one thing alone, but one thing with other things together, And therefore it behooveth in this case to put the Lands given in Frankmarriage with the other Lands in Hotchpot, if the Husband and Wife will have any part in the other Lands.

in this special case where there be two Daughters, one of them only shall inherit the Lands in fee simple. Secondly, That in this case there lieth no Writ of partition, because non tenent insimul & pro indiviso. Thirdly, If the Parcener to whom the Land in fee simple descended, will not put the Lands in Hotchpot, then may the Donees enter into the fee simple Lands, and hold them in Copartenary with her.

(k) Glanvil l.7.c.5. Bract.l.2.fo.60. Fleta l.2.c.55. Magna Charta c.18.3. F.N.B.222. 30.E.3. 25. 31.E.3. Resp.60. 31.Ass.14. 17.E.2. Detinew. 17.E.3.17. 1.E.2. Detinew 56. 31.H. 8. tit. Rationab. parte Bonorum 6. * Lamb.f.119.68.

(k) And it seemeth by our old books, That by the antient Law there was a kind of resemblance hereof concerning goods. Si autem post debita deducta, & post deductionem expensarum quæ necessaria erunt, id totum quod tunc superfuerit dividatur in tres partes, quarum una pars relinquatur pueris si pueros habuerit defunctus. Secunda, Uxori si superstes fuerit, & de tertia parte habeat testator liberam disponendi facultatem: si autem liberos non habeat, tunc medietas defuncto, & alia medietas uxori, si autem sine uxore decesserit liberis existentibus, tunc medietas defuncto, & alia medietas liberis tribuatur: si autem sine uxore & liberis, tunc id totum defuncto remanebit. And by the Law before the Conquest it * was thus provided, Sive quis in curia, sive morte repentine fuerit intestatus mortuus, dominus tamen nullam rerum suarum partem (præter eam quæ jure debetur) herioti nomine sibi assumito, verum eas judicio suo uxori, liberis & cognatione proximis juste pro suo cuique jure distribuito.

(l) Regist.142. 34.E.1. Detinew 60. 1.E.4.6. 7.E.4.21. 43.E.3.28. (m) 3.E.3. Detinew 156 40.E.3.38.

But it appeareth by the Register (l) and many of our Books, that there must be a custom alledged in some County, &c. to inable the wife or children to the writ de rationabile parte bonorum, and so hath it been resolved in Parliament. (m) But such children as be reasonably advanced by the father in his life time with any part of his goods, shall have no further part of his goods, for the words of the Writ be, Nec in vita patris promoti fuerunt.

Note, The custom of London is, That if the father advance any of his children with any part of his goods, that shall bar them to demand any further part, unless the father under his hand, or in his last will do express and declare, that it was but in part of advancement, and then that child so partly advanced, shall put his part in Hotchpot, with the executors and widow, and have a full third part of the whole, accounting that which was formerly given unto him as part thereof. And this is that in effect, which the Civilians call Collatio bonorum.

¶ *Et il ſemble que ceſt Parol (hotchpot) eſt en Engliſh*, a Pudding, *&c.* Littleton both here and in other places ſearcheth for the ſignification of words, in all Arts a thing moſt neceſſary, for ignoratis terminis ignoratur & ars, vide for Etymologies, Sect. 95. 119. 135. 154. 164. 204. 234, &c.

¶ *Hutſpot or Hotſpot*, is an old Saxon word, and ſignifieth ſo much as Littleton here ſpeaks. And the French uſe Hotchpot for a commixtion of divers things together. It ſignifieth here metaphorically in partem poſitio. In Engliſh we uſe to ſay Hodgepodge, in Latin Farrago, or Miſcellanenm.

The reſidue of this Section needeth no explication.

Vide Brit. c. 72. 4. E. 3. 49 6. E. 3. 30. 10. E. 3. 36. 24. E. 3. 27. F. N. B. 262. Regiſt. 320. Fleta l. 6. c. 47. Mich. 10. E. 1. coram Rege Hereford in theſaur.

Sect. 268.

¶ Et ceſt terme (Hotchpot) eſt noſtre un terme ſimilitudinarie, & eſt a tant adire, ceſtaſcavoir, de mitter les terres en Frankmariage, & les auters terres en fee ſimple enſemble, & ceo eſt a tiel entent de conuſter le value de touts les terres, ſ. de les terres dones en Frankmariage, & de le remnant que ne ſueront dones, & donqes partition ſerra fait en le forme que enſuiſt. Si come, mittomus que home ſoit ſeiſie de 30 acres de terre en fee ſimple, cheſcun acre de value de 12 d. per an, & que il ad iſſue deux files, & lun eſt covert de baron, & le pier dona 10 acres de les 30 acres, a le baron, oue ſa file en Frankmariage, & morust ſeiſie de l' remnant, donques lauter ſoer entra en le remnant, ſ. ẽ les 20 acres, & eux occupier, a ſon uſe demeſne, ſi non que le baron & ſa feme voile mitter les 10 acres dones en Frankmariage, oue les 20 acres en Hotchpot, ceſtaſcavoir, enſemble, & donque quant le value de cheſcun acre eſt conus, ceſtaſcavoir que cheſcun acre vault per an, & eſt aſſeſſe, ou enter eux agree, que cheſcun acre vault p an 12. d. donques le partition

AND this term (Hotchpot) is but a term ſimilitudinary, and is as much to ſay, as to put the lands in Frankmarriage, and the other Lands in Fee ſimple together, and this is for this intent, to know the value of all the Lands, *ſcil.* of the lands given in Frankmarriage, and of the remnant which were not given, & then partition ſhall be made in form following. As, put the caſe that a man be ſeiſed of 30 Acres of Land in Fee ſimple, every Acre of the value of 12 pence by the year, and that he hath iſſue two Daughters, and the one is Covert Baron, and the Father gives 10 Acres of the 30 Acres to the Huſband with the Daughter in Frankmarriage, and dieth ſeiſed of the remnant, then the other ſiſter ſhall enter into the remnant, *viz.* into the 20 Acres, and ſhall occupy them to her own uſe, unleſs the husband and his wife will put the 10 Acres given in Frankmarriage, with the 20 Acres in Hotchpot, that is to ſay, together; and then when the value of every Acre is known, to wit, what every Acre valueth by the year, and is aſſeſſed or agreed between them, that every Acre is worth by the year 12 pence: Then the partition ſhall be

ſerra fait en tiel forme, ceſtaſcavoir le baron & ſa feme averont ouſtre les 10 acres dones a eux en Frankmariage 5 acres en ſeveraltie de les 20 acres, & lauter ſoer avera le remnant, ſ. 15 acres de les 20 acres pur ſa purpartie, iſſint que accomptant les 10 acres que le baron & ſa feme ount per le done en Frankmariage, & les auters 5 acres de les 20 acres, le baron & ſa feme ont autant en annual value, que lauter ſoer ad.

made in this manner, *viz.* the Husband and Wife ſhall have beſides the 10 acres given to them in Frankmarriage 5 Acres in ſeverality of the 20 Acres, and the other Siſter ſhall have the remnant, *ſc.* 15 Acres of the 20 Acres for her purparty, ſo as accounting the 10 Acres which the Baron and Feme have by the gift in Frankmarriage, and the other 5 Acres of the 20 Acres, the Husband and Wife have as much in yearly value as the other ſiſter.

Bract. l. 2. f. 77. l. 5. f. 428 Br. c. 72. & Fleta l. 6. c. 47. 4. E. 3. 49. 10. E. 2. 37. (n) 10. E. 3. 37. 10. Aſſ. 14 4. E. 3. 49. (o) 29. Aſſ. 23.

AND herewith in expreſs terms agreeth Bracton, Britton, and Fleta, and all the Books abovesaid, and many others. And it is worthy the obſervation (n) that after this putting into Hotchpot, and partition made, the Lands given in Frankmarriage, are deemed as the other Lands which deſcended from the common Anceſtor, and of theſe Lands if he be impleaded (o) ſhe ſhall have aid of the other Parcener as if the ſame Lands had deſcended. So the Coparcener that hath a Rent granted to her for want of partition, as is aforeſaid, hath the Rent, as if it had deſcended to her from the common Anceſtor.

Sect. 269.

ET iſſint touts ſoits ſur tiel partition, les terres dones en Frankmariage demurgent a les donees & a lour heires ſolonq; le forme de le done. Car ſi lauter Parcen̄ aūoit riens de ceo que eſt done en Frankmariage, de ceo enſueroit inconbiens, & choſe encounter reaſon, que la ley ne voit ſuffer. Et la cauſe pur que les terres dones en Frankmariage ſerront mis en Hotchpot, eſt ceo, quant hōe done terres ou tenements en Frankmariage oue ſa file, ou oue auter coſin, il eſt entendus per la ley que tiel done fait per tiel Parol (Frankmariage) eſt un avancement, & pur avancement de ſa file, ou de ſon auter coſin, & noſmement

AND ſo always upon ſuch partition the lands given in Frankmarriage remain to the Donees and to their Heirs according to the form of the gift: for if the other Parcener ſhould have any of that which is given in Frankmarriage, of this would enſue an inconvenience, and a thing againſt reaſon, which the Law will not ſuffer. And the reaſon why the Lands given in Frankmariage ſhall be put in Hotchpot, is this, when a man giveth Lands or Tenements in Frankmarriage with his Daughter, or with his other Couſin, it is intended by the Law that ſuch gift made by this word (Frankmarriage) is an advancement, and for advancement of his Daughter, or of his Couſin, and namely, when

quant

quant le donor et ſes heires naveront aſcun rent ne ſervice de eux, ſinon que ſoit fealty, tanque le quart degree ſoit paſs, &c. Et pur tiel cauſe la ley eſt que el avera riens de les auters terres ou tenements diſcendus a lauter parcener, &c. ſinon que el voile mitter les terres dones en frankmariage en Hotchpot, come eſt dit. Et ſi el ne voille mitter les terres dones en frankmarriage en Hotchpot, donque el navera riens del remnant pur ceo que ſerra entendu per la ley que el eſt ſufficientment avance, a que avancement el ſoy agree et luy tient content.

the Donor and his Heirs ſhall have no Rent nor ſervice of them but fealty until the fourth degree be paſt. And for this cauſe the Law is that ſhe ſhall have nothing of the other Lands or Tenements deſcended to the other parcener, &c. unleſs ſhe will put the Lands given in Frankmarriage in Hotchpot as is ſaid. And if ſhe will not put the Lands given in Frankmarriage in Hotchpot, then ſhe ſhall have nothing of the remnant, becauſe it ſhall be intended by the Law, that ſhe is ſufficiently advanced, to which advancement ſhé agreeth, and holds her ſelf content.

¶ *De ceo enſueroit enconvenience & choſe encounter reaſon que la ley ne voet ſuffer.*

Quod eſt inconveniens aut contra rationem non permiſſum eſt in lege. Hereby it appeareth, as it hath been often noted. (o) that an argument ab inconvenienti aut ab eo quod eſt contra rationem, is forcible in Law. (p) Nihil enim quod eſt inconveniens eſt licitum. Regula. *) Vi. Sect. 138. 139. 231. 440. 478. 483. 728. (o) 40. Aſſ. 27.

¶ *Tanque le* 4. *degree ſoit pas, &c.* Here by (&c.) is implied how the degrees ſhall be accounted, whereof ſufficient hath been ſaid before. Sect. 20.

Sect. 270.

¶ Mes lim la ley eſt perenter les heires de les dones en frankmarriage, et les auters parceners, &c. ſi les donees en frankmariage devont devāt lour auncester, ou devant tiel partition, &c. quant a mitter en Hotchpot, &c.

THE ſame Law is between the heirs of the donees in frankmarriage, and the other parceners, &c. if the donees in frankmarriage die before their anceſtor, or before ſuch partition, &c. as to put in Hotchpot, &c.

¶ By theſe three (&c.) in this Section is implied that if either the Donees die before the Anceſtor, or ſurvive the Anceſtor and die before ſuch a partition, or if the Donees and all the parceners die before ſuch partition upon the putting into Hotchpot, their iſſues ſhall have the ſame benefit to put the Lands into Hotchpot, for that benefit is heritable, and deſcendible to the iſſues.

Sect. 271.

¶ Et nota que dones en frankmariage fueront per

And note that gifts in frankmarriage were by the Common

¶ *Continue, &c.* By this (&c.) is to be underſtood that before the ſtatute it was a fee ſimple, and

since the statute of fee tail. So as it is true, that (q) the gifts be continue (as our Author here saith) but not the estates. For the estate is changed, as at large appeareth in the Chapter of Estates in tail. And albeit our Author here saith that such gifts have been always since used and continued, yet now they be almost grown out of use, and serve now principally for Moot cases, and questions in Law that thereupon were wont to rise.

(q) 12. H. 4. 11. 31. E. 3. Gard. 116.

la common ley devant le Statute de Westm̃ second, et tout temps puis ad este use et continue, &c.

Law before the Statute of Westminst. second, and have been always since used and continued, &c.

Sect. 272.

THe Lands given in frankmarriage, and the lands in fee simple must move from one and the same Ancestor, for the Lands given in frankmarriage are in respect of the advancement accounted in Law as hath been said, as if the same had descended from the same Ancestor who died seised of the fee simple Lands, and there is no reason to bar the Donee of her full part of the fee simple Lands that descended from another Ancestor from whom she had no such advancement.

¶ *Nemy per le donor, &c.* Here (&c.) importeth no more but that donor that made the gift of Frankmarriage, the other two (&c.) in this Section need no explanation.

ITem, tiel mitter en Hotchpot, &c. est lou les auters terres ou tenements q̃ ne fuer̃ dones en frankmarriage descendont de les donors en frankmarriage tantsolement, car si les terres descenderont a les files per le pier le donor, ou per le mere le donor, ou per le frer̃ l' donor ou auter ancestor, & nemy per le donor, &c. la autrement est, car en tiel cas el a quel tiel done en frankmarriage est fait avera sa part sicome nul tiel done en frankmarriage ust este fait, pur ceo q̃ el ne fuit avanc̃ per eux, &c. eins per un auter, &c.

ALso such putting in Hotchpot, &c. is where the other Lands or Tenements which were not given in frankmarriage descend from the donors in frankmarriage only, for if the lands shall descend to the daughters by the father of the donor, or by the mother of the donor, or by the brother of the donor or other ancestor, and not by the donor, &c. there it is otherwise, for in such case, she to whom such gift in frankmariage is made shal have her part as if no gift in frankm. had been made, because that she was not advanced by them, &c. but by another, &c.

Sect. 273.

BY this Section and the (&c.) herein, some have gathered that the value of the lands shall be accounted as they were at the time of the gift in frank-

ITem, si home seisie de 30 acres de terre chescun acre de ouel annual value eiant issue deux files cõe est avantdit, & dona 15 acres de

ALso if a man be seised of 30 acres of Land every acre of equal annual value, and have issue two daughters as aforesaid, and giveth 15 acres

ceo

ceo a le baron oue ſa file en frankmarriage, & moyſt ſeiſie de les auters 15 acres, en ceſt caſe lauter ſoer abera les 15 acres iſſint diſcēdus a luy ſole, et le baron et ſa femme ne mitteront en tiel cas les 15 acres a eux dones en frankmarriage en Hotchpot, pur ceo q̄ les tenemēts dones ē frankmarriage ſont de auxy grand & de bone annual value come les auters terres diſcendus, &c. Car ſi les terres dones en frankmarriage ſont de tant egal annual value, que le remnant ſont, ou de pluis value, en vaine & a nul entent tiels tenemēts dones en frankmarriage ſerra mis en Hotchpot, &c. pur ceo que el ne poit tiens aver de les auters terres diſcendus, &c. car ſi el aūoit aſcun parcel de les tenements diſcendus, donques el abera pluis de annual value que ſa ſoer &c. que la ley ne voit, &c. Et ſicome eſt parle ē les caſes avandits de deux files ou de deux parceners, en mē le maner eſt en ſemblabl' cas lou ſont pluſoyrs ſoers ou pluſoyrs parceners, ſolonq̄ ceo q̄ l' caſe & l' matter eſt, &c.

hereof to the Husband with his daughter in frankmarriage, and dies ſeiſed of the other 15 acres. In this caſe the other ſiſter ſhall have the 15 acres ſo deſcended to her alone, and the Husband and Wife ſhall not in this caſe put the 15 Acres given to them in Frankmarriage into Hotchpot, becauſe the Tenements given in Frankmarriage are of as great and good yearly value as the other Lands deſcended, &c. for if the Lands given in Frankmarriage be of equal or of more yearly value then the remnant, in vain and to no purpoſe ſhall ſuch tenements given in frankmarriage be put in Hotchpot, &c. for that ſhe cannot have any of the other lands deſcended, &c. for if ſhe ſhould have any parcel of the lands deſcended, then ſhe ſhall have more in yearly value then her ſiſter, &c. which the Law will not, &c. And as it is ſpoken in the caſes aforeſaid of two daughters or of two parceners; in the ſame manner it is in the like caſe where there are more ſiſters or more parceners, according as the caſe and matter is, &c.

marriage, but it is clear that the value ſhall be accounted as it was at the time of the partition, for if the Donor purchaſe more lands after the gift, or if the land given in Frankmarriage be by the act of God decayed in value, or if the remnant of the Lands in fee ſimple be improved after the gift, or è converſo, the Law ſhall adjudge of the value as it was at the time of the partition, (unleſs it be by the proper act or default of the parties) as hath been ſaid before in the former Chapter. And ſome have collected upon this Section that the reverſion in fee of the Lands given in frankmariage ſhall only deſcend to the Donee, for otherwiſe the other ſiſter ſhall have more benefit then the Donee, which ſhould be againſt the reaſon of our Author.

¶ *In vaine & a nul entent, &c.* for it is a maxim in Law, Lex non præcipit inutilia, quia inutilis labor ſtultus. Regula. Vid. Sect. 194. 357. Lib. 5 fol. 89.

Sect.

Sect. 274.

ET est ascavoir, que Terres ou tenemẽts dones en frankmariage ne serra mise en Hotchpot, forsque ou Terres discende en fee simple, car de terre discendus en fee taile Partition serra fait, sicome nul tiel done en frankmariage ust este fait.

AND 'tis to be understood, that lands or tenements given in Frankmariage shall not be put in hotchpot but where lands descend in fee simple, for of Lands descended in Fee tail partition shall be made, as if no such gift in Frankmariage had been made.

31. Ass. pl. 14. ¶ FOr of Lands intailed, the Donee in Frankmarriage shall have as much part as the other Coparcener, because over and besides the Land given in frankmarriage the issue in Tail claimeth per formam doni, and both of the Parceners must equally inherit by force of the gift, & voluntas Donatoris, &c. observetur.

Sect. 275.

ITem nuls Terres serra mise en Hotchpot oue auters sinon terres que fueront done en frankmariage tantsolement: Car si ascun Feme ad ascuns auters terres ou tenements per ascun auter done en le tayle, el ne unques mittera tiel Terre issint done en Hotchpot, mes el avera sa purpartie de le remnant discẽdus, &c. s, a tant que lauter Parcener avera ẽ mi l' remnant.

ALso no Lands shall be put in Hotchpot with other Lands, but Lands given in Frankmarriage only: for if a woman have any other Lands or Tenements by any other gift in tail, she shall never put such Lands so given in Hotchpot, but she shall have her purparty of the remnant descended, &c. (*videlicet*) as much as the other Parcener shall have of the same remnant.

13. E. 2. tit. Tail. 26. 6. E. 3. 30. b. 4. E. 3 49. 50 ¶ FOr if the Ancestor infeoffeth one of his daughters of part of his Land, or purchase lands to him and her, and their heirs, or giveth to her part of his Lands in tail special or general, she notwithstanding this shall have a full part in the remnant of the Lands in fee simple, for the benefit of putting, &c. into Hotchpot, is only appropriated to a gift in frankmarriage (quia maritagium cadit in partem) which shall be (as is aforesaid) accounted as parcel of her advancement.

Bro. l. 2. fo. 77.

Sect. 276.

ITem un auter Partition poet este fait enter parceñs que variast de les Partitions avantdits. Sicõe y sont trois Parceners, & le puisñ voet aver partitiõ & les auters deux ne voillont, mes voilent tener en parcenarie ceo que a eux affi-

ALso another partition may be made between Parceners which varieth from the Partitions aforesaid. As if there be three Parceners, and the youngest will have partition, and the other two will not, but will hold in Parcenary that which to them belong-

ert

ert ſans partē, en cē caſe ſi un pt ſoit alot en ſeūalty al puiſne ſoer ſolonq; ceo que el doit aver, donques les auters poient tener le remnant en parcenarie, & occupier en common ſans partition ſi els voilent, & tiel partition eſt aſſets bone. Et ſi apres leigne, ou le mulnes Parcener voile faire partition inter eux, ō ceo que ils teignont, ils poient ceo bien faire quant a eux pleiſt. Mes lou partition ſerra fait per force de Briefe de Partitione facienda, la autrement eſt, car la covient que chescun Parcener avera ſa part en ſeveraltie, &c.

geth, without partition: in this caſe if one part be allotted in ſeveralty to the youngeſt ſiſter, according to that which ſhe ought to have, then the others may hold the remnant in parcenary, and occupy in Common without Partition, if they will, and ſuch Partition is good enough. And if afterwards the eldeſt or middle parcener will make partition between them of that which they hold, they may well do this when they pleaſe. But where partition ſhall be made by force of a Writ of *Partitione facienda*, there 'tis otherwiſe, for there it behoveth that every parcener have her part in ſeveralty, &c.

¶ Pluis ſerē dit des parceñs en le Chapter de Joyntenants, & aury en le Chapter de Tenāts en Common.

More ſhall be ſaid of parceners in the Chapter of Joyntenants, and alſo in the Chapter of Tenants in Common.

HEre it is to be obſerved, that this partition is good by conſent, for Conſenſus tollit errorem, but if it be by the Kings Writ, then every Parcener muſt have his part. And here you may ſee that modus & conventio vincunt legem. 24.H.8.tit.Part.c.19 Regula.

¶ *En ſeveraltie, &c.* Here by this (&c.) is implied another kind of ſeveralty than our Author hath mentioned, and that is, That the one Parcener ſhall have the land in ſeveralty from the Feaſt of Eaſter until the 6th of Auguſt (that is, the firſt of Auguſt) and the other in ſeveralty from thence until the Feaſt of Eaſter, or the like, & ſic alternis vicibus to them and their heirs in perpetuum, whereof ſufficient hath been ſpoken before.

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*Chap.*3. Of Joyntenants. *Sect.*277.

¶ Jointeñts ſont, ſicome home ſeiſie de certaine Terres ou Tenements, &c. & enfeoffe deux, trois, quater, ou pluſoz, a aver & tenē a eux pur term de lour vies, ou a terme dauter vie, p force de quel feoffmt ou leaſe ils ſont ſeiſi, &c. ergo, there muſt be

JOyntenants are, as if a man be ſeiſed of certain Lands or Tenements, &c. and infeoffeth two, three, four, or more, to have and to hold to them for term of their lives, or for term of anothers life, by force of which feoffment or

THis agreeth not with the Original, for it ſhould be Joyntenant ſont ſicome home ſeiſie de certain terres ou tenements, &c. & ent enfeoffe deux ou trois, ou quater, ou pluſors a aver & tener a eux & a lour heires ou leſſa a eux pur terme de lour vies, ou pur terme dauter vie, per force de quel feoffement, ou leaſe, &c. The error may eaſily be perceived by that which is in print, viz. By force of which feoffment or leaſe, &c. Bract. l.4.fo.262. Brit. c.35.& fo.112. Fleta l.3. c.4.10.& l.6. cap. 47.

be feoffment and leaſe ſpoken of before.

ſies, tiels ſont Joyntenants.

leaſe they are ſeiſed, theſe are Joyntenants

There be alſo Joyntenants by other conveyances then Littleton here mentioneth, as by Fine, Recovery, Bargain, and Sale, Releaſe, Confirmation, &c. So there be divers other limitations then Littleton here ſpeaketh of: As if a Rent charge of ten pounds be granted to A. and B. to have and to hold to them two, viz. to A. until he be married, and to B. until he be advanced to a Benefice, they be Joyntenants in the mean time, notwithſtanding the ſeveral limitations: and if A. dye before marriage, the rent ſhall ſurvive; but if A. had married, the rent ſhould have ceaſed for a moiety, & ſic è converſo on the other ſide.

7.E.4.29.11.H.4.26. Littleton having ſpoken of one kind of Tenants pro indiviſo, viz. of Parceners, cometh now to another, viz. Joyntenants, and firſt of Joyntenants of Freehold. If an Alien and a ſubject purchaſe lands in fee, they are Joyntenants, and the ſurvivorſhip ſhall hold place, Et nullum tempus occurrit regi, upon an office found.

¶ *Joyntenants.* So called, becauſe the Lands or Tenements, &c. are conveyed to them joyntly, conjunctim feoffati, &c. or qui conjunctim tenent, and are diſtinguiſhed from ſole or ſeveral Tenants, from Parceners, and from Tenants in Common, &c. and anciently they were called Participes, & non hæredes. And theſe Joyntenants muſt joyntly implead and joyntly be impleaded by others, which property is common between them and Coparceners, but Joyntenants have a ſole quality of ſurvivorſhip, which Coparceners have not. Littleton having now ſpoken of Parceners and of Joyntenants of right, doth next ſpeak of Joyntenants by wrong.

Fleta l.6.c.47. Bract.l.5.fol.435.a.

Sect. 278.

¶ IT is to be obſerved, that ſome Diſſeiſors be Tenants of the Land, and ſome be no Tenants of the Lands, and of both theſe kinds Littleton here ſpeaketh.

ITem ſi deux ou trois, &c. diſſeiſont un auter daſcun terres ou Tenements a lour uſe demeſne: donques les Diſſeiſours ſont Joyntenants. Mes ſils diſſeiſõt un auter al uſe dun de eux, donques ils ne ſont Joyntenants, mes celuy a que uſe le diſſeiſin eſt fait eſt ſole tenant, & les auters nont riens en le tenancie, mes ſont appels coadiutors a le Diſſeiſin, &c.

Alſo if two or three &c. diſſeiſe another of any lands or tenements to their own uſe, then the diſſeiſors are Joyntenants. But if they diſſeiſe another to the uſe of one of them, then they are not Joyntenants, but he to whoſe uſe the Diſſeiſin is made, is ſole Tenant, and the others have nothing in the Tenancy, but are called Coadjutors to the Diſſeiſin, &c.

50.E.3.2. 17.Aſſ.14. 14.Aſſ.12. 8.Aſſ.p.30. 10.E.2.47. 10.Aſſ.22. 23.H.8.tit.Diſſeiſ.b.77. 28.Aſſ.21. 27.Aſſ.30. 12.E.4.9.7.E.4.7.b. 38 Aſſ.7.21.H.7.35. 29.Aſſ.50.21.H.8.25. 35.H.6.61. 21.E.4.46. 15.E.4.15.F.N.B.179.g. &c. In the firſt &c. nothing is implied but four or five, or more, but in the latter &c. many things be to be underſtood, as of Diſſeiſors that be no Tenants, ſome are Coadjutors, whereof Littleton here ſpeaketh, ſome Counſellors, Commanders, &c. when the diſſeiſin is not to be done to any of their uſes. Alſo if A. diſſeiſe one to the uſe of B. who knoweth not of it, and B. aſſent to it, in this caſe till the agreement, A was tenant of the Land, and after agreement B. is tenant of the Land, but both of them be Diſſeiſors: for omnis ratihabitio retrotrahitur & mandato æquiparatur. And it is worthy of the obſervation, and implied alſo in the latter (&c.) that ſeeing Coadjutors, Counſellors, Commanders, &c. are all Diſſeiſors, that albeit the Diſſeiſor which is Tenant dieth, yet the Aſſiſe lieth againſt the Coadjutor, Counſellor, Commander, &c. and Tenant of the Land, though he be no diſſeiſor.

(a) 50.E.3.2. (a) The Demandant and others in a Præcipe did diſſeiſe the Tenant to the uſe of the others, and the Writ did not abate, for the Demandant was a Diſſeiſor, but gained no tenantry in the Land, for that he was but a Coadjutor.

A man diſſeiſeth Tenant for life to the uſe of him in the reverſion, and after he in the reverſion agreeth to the diſſeiſin, it is ſaid, That he in the reverſion is a diſſeiſor in fee, for by the Diſſeiſin made by the ſtranger, the reverſion was diveſted, which (ſay they) cannot be

reveſted by the agreement of him in the Reverſion, for that it maketh him a wrong doer, and therefore no relation of an eſtate by wrong can help him.

¶ *Coadjutor.* Coadjutor eſt qui auxiliatur alteri, and is derived à coadjuvando, Anglicè a fellow helper.

Sect. 279.

¶ Et nota q̃ diſſeiſin eſt pr̃o-pernēt lou un home entra en aſcun terres ou tenements lou ſon entre neſt pas congeable, & ouſta celuy que ad franktene-ment, &c.

And note that diſſeiſin is properly where a man entreth into any Lands or Tenements where his entry is not congeable, and ouſteth him which hath the Freehold, &c.

¶ This deſcription of a diſſeiſin and the (&c.) in this place is underſtood only of ſuch Lands and Tenements whereunto an entry may be made, and not of Rents, Commons, &c. whereof ſufficient hath been ſaid before in the Chapter of Rents, and ſo in effect Littleton deſcribed it before the Edition of his book. And note here that every entry is no diſſeiſin, unleſs there be an ouſter alſo of the Freehold. And therefore Littleton doth not ſet down an entry only, but an ouſter alſo, as an entry and a claimer, or taking of profits, &c.

3.E.4.2.34.Aſſ.11.12. 26.Aſſ.17.41.Aſſ.10. 24.E.3.31.Pl.Com.89. Parſon de Hony Lane. 7.Aſſ.10.11.Aſſ.25. 1.E.3.tit.Aſſ.88.45.Aſſ. 7.9.Aſſ.19.39.Aſſ.1. 18.E.2.Aſſ.374.

Now as there be Joyntenants by diſſeiſin, ſo are there Joyntenants by Abatement, Intruſion, and Uſurpation, all which are included in the latter &c.

Sect. 280.

¶ Et eſt aſcavoir que la nature de ioyntenancie eſt, q̃ celuy que ſurveſquiſt avera ſolement lentier tenancie ſolonq̃ tiel eſtate que il ad, ſi le ioynture ſoit continue, &c. Sicome ſi trois. Joyntenants ſont en fee ſimple, & lun ad iſſue & devie, uncore ceux que ſurveſquont aũont les tenements entier, & iſſue navera riens. Et ſi le 2. ioyntenant ad iſſue & devie, uncore l'tierce que ſurveſquiſt avera les tenemēts entier, & eux avera a luy & a ſes

And it is to be underſtood, that the nature of joyntenancy is, that he which ſurviveth ſhall have only the entire tenancy according to ſuch eſtate as he hath, if the joynture be continued, &c. As if three Joyntenants be in Fee ſimple, and the one hath iſſue, and dieth, yet they which ſurvive ſhall have the whole tenements, and the iſſue ſhal have nothing. And if the 2. joyntenant hath iſſue and die, yet the third which ſurviveth ſhall have the whole tene-

¶ *Si le joynture ſoit ſcontinue, &c.*

Here by this (&c.) many points of learning are to be obſerved, as that it is proper to Joyntenants only to have Lands by Surviver, for no Surviver of other Tenants pro indiviſo, ſhall have the whole by Surviver, but only Joyntenants, and this is called in Law jus accreſcendi. Omnes feoffati ſunt ſimul habendi & tenendi, nec totum nec partem ſeparatam nec per ſe, ſed ut quilibet eorum totum habeat cum aliis in communi, & cum unus moriatur non deſcendit aliqua pars hæredi morientis, nec ſeparata nec in communi ante mortem omnium, ſed pars illa communis per jus accreſcendi accreſcit ſuperſtitibus de perſona ad perſonam uſque ad ultimum ſuperſtitem. But although Surviverſhip be proper to Joyntenants, yet it is not proper quarto modo (that is) omni, ſoli & ſemper, for there may be

Bract.l.4.fo.262.b. Britton c.35.Fleta l.3. c.4. & c.10.49.E.3. fol.5.6.

Joyntenants, though there be not equal benefit of Survivor on both sides. As if a man letteth lands to A. and B. during the life of A. if B. dieth, A. shall have all by the Survivor, but if A. dieth, B. shall have nothing.

Two or more may have a Trust or an Authority committed to them joyntly, and yet it shall not survive. But herein are divers diversities to be observed: First, there is a diversity between a naked Trust or an Authority, and a Trust or Authority joyned to an estate or interest. Secondly, there is a diversity between authorities created by the party for private causes, and Authority created by law, for execution of Justice. As for example, (b) if a man devise that his two executors shall sell his Land, if one of them die, the Survivor shall not sell it, but if he had devised his Lands to his Executors to be sold, there the Survivor shall sell it, which diversity is implyed by our Authors, for be saith, that he that surviveth shall have the entire tenancy.

(b) 39.Ass.p.17 30.H.8.tit.devise-B. Dier 3.El.190.49.E.3. 16.2.Eliz.Dier 177. 23.El.z.Dier 371.44.El. Dier 210.10 El.1.2.& 3 14.H.4.34. 39.H.6.42. 31.Ass.20. 33.H.8.joyn. Br.62. 30.H.8. condition Br.190.

If a man make a Letter of Attorney to two, to do any act, if one of them die, the survivor shall not do it: but if a Venire facias be awarded to four Coroners to impannel, and return a Jury, and one of them dye, yet the other shall execute and return the same.

If a charter of feoffment (c) be made, and a Letter of Attorney to four or three joyntly and severally to deliver seisin, two of them cannot make livery, because it is neither by them four or three joyntly, nor any of them severally: but if the Sheriff upon a Capias directed to him make a Warrant to four or three joyntly or severally to arrest the Defendant, two of them may arrest him, because it is for the execution of Justice (d) which is pro bono publico, and therefore shall be more favourably expounded, then when it is only for private, and to hath it been adjudged, Jura publica ex privatis promiscuè decidi non debent.

(c) 38.H.8.Dier 62. 27.H.8.fol.6.

d) Pasch.45.Eliz.in the Kings Bench between King and Hobbes.

¶ *Et devie.* Note there is a natural death and a civil death, and Littletons case is to be intended of both, and therefore (e) if two Joyntenants be, and one of them entreth into Religion, the survivor shall have the whole.

e)21.R.2.judgment 263

¶ Et come le survivor tient lieu enter joyntenants, en meisme le maner il tient lieu enter eux queux ont joynt estate ou possession oue auter de chattel real ou personal. Sicome si leas de terres ou tints soit fait a pluisors pur terme des ans, celuy q̄ survesquist de les lessees avera les tenements a luy entier, durant l'terme, per force de meisme le leas. Et si un chival heires a touts iours, Mes autrement est de Parceners. Car si trois parceners sont, & devant ascun partition fait, lun ad issue & devie, ceo que a luy affiert discendra a son issue. Et si tiel parcener morust sans issue, donques ceo que a luy affiert discendra a ses coheires tanq̄ q̄ ils averont ceo per discent, & memy per survivor, come joyntenants averont, &c.

Sect. 281.

AND as the survivor holds place between Joyntenants, in the same manner it holdeth place between them which have joynt Estate or Possession with another of a Chattel, real or personal. As if a Lease of Lands or Tenements be made to many for term of years, he which survives of the Lessees, shall have the Tenements to him only during the term by force of

ments to him and to his heirs for ever, but otherwise it is of Parceners, for if three parceners be, and before any partition made, the one hath issue and dieth, that which to him belongeth shall descend to his issue, & if such Parcener die without issue, that which belongs to her shal descend to her coheirs, so as they shall have this by descent and not by survivor, as Joyntenants shall have, &c.

ou un auter chattel perſonal ſont done a pluſors, celuy que ſurveſquiſt avera le chival ſolement.

the ſame leaſe. And if a Horſe, or any other Chattel perſonal be given to many, he which ſurviveth ſhall have the Horſe only.

¶ Hereby it is manifeſt that ſurvivor holdeth place regularly as well between Joyntenants of Goods and Chattels in poſſeſſion or in right, as Joyntenants of Inheritance or Freehold.

¶ *Chattel*, Of Catell, whereof cometh the word uſed in Law (f) Catalla, and is as Littleton here teacheth, twofold, viz. real and perſonal, and putteth examples of both. (f) Reg. Origin. 139. 244 Bract. l. 2. 39. H. 6. 35. Stanford Pr. 45.

Sect. 282.

¶ En meſme le maner eſt de dets & duties, &c. car ſi un obligation ſoit fait a pluſors pur un debt, celuy q ſurveſquiſt avera tout le det ou dutie. Et iſſint eſt dauters Covenants & Contracts, &c.

IN the ſame manner it is of Debts and Duties, &c. for if an Obligation be made to many for one debt, he which ſurviveth ſhall have the whole Debt or Duty. And ſo is it of other Covenants and Contracts, &c.

¶ Now he ſpeaketh of Debts, Duties, Covenants, Contracts, &c.

¶ *Dets & Duties, &c.* Here by force of this (&c.) an exception is to be made of two Joynt Merchants; for the Wares, Merchandizes, Debts, or Duties that they have as Joynt Merchants or Partners ſhall not ſurvive, but ſhall go to the Executors of him that deceaſeth, and this is per legem Mercatoriam, which (as hath been ſaid) is part of the Laws of this Realm, for the advancement and continuance of Commerce and Trade, which is pro bono publico, for the rule is, That jus accreſcendi inter Mercatores pro beneficio commercii locum non habet. F.N.B. 117. E. 38. E. 23. 7.

And to the latter (&c.) in this Section the like exception muſt be made.

Sect. 283.

¶ Item, aſcũs ioint-tenants poient eſtre que poient aver ioint eſtate, & eſtre iointenants pur terme de lour vies, et uncore ils ont ſeveral enheritances. Sicome terres ſoient dones a deux homes & a lez heires de lour deux corps engendres, en ceſt caſe les donees ont ioint eſtates pur terme de lour deux vies, et uncore ils oũt

ALſo there may be ſome joyntenants which may have a joynt eſtate, and be joyntenants for term of their lives, and yet have ſeveral inheritances. As if Lands be given to two men and to the Heirs of their two bodies begotten. In this caſe the donees have a joynt eſtate for term of their two lives, and yet they have ſeveral inheritances, for if one of

¶ *Ils ont joynt eſtate pur terme de lour deux vies, &c.* Note, albeit they have ſeveral inheritances in tail, and a particular eſtate for their lives, yet the inheritance doth not execute, and ſo breaks the Joyntenancy, but they are Joyntenants for life, and Tenants in Common of the Inheritance in tail. Vide Sect. 296.

¶ *Sicome home & feme poient aver, &c.* Here a diverſity is implied, when the eſtate of Inheritance is limited by one conveyance, Vide Weſtcotes caſe. L. a. fo. 60. 61.

as in this case it is, there are no ſeverall eſtates to drown one in another: But when the ſtates are divided in ſeverall conveyances, their particular eſtates are diſtinct and divided, and conſequently the one drowns the other: As if a Leaſe be made to two men for term of their lives, and after the Leſſor granteth the reverſion to them two, and to the heirs of their two bodies, the joynture is ſevered, and they are Tenants in common in poſſeſſion. And it is further implied that in this caſe of Littleton there is no diviſion between the eſtate for lives, and the ſeverall Inheritances, for in this caſe they cannot convey away the inheritances after their deceaſe, for it is divided only in ſuppoſition and conſideration of Law, and to ſome purpoſes the inheritance is ſaid to be executed, as ſhall be ſaid hereafter.

Vide 12.E.4.2.b.

(f) 39.H.6.2.b.

If a man make a leaſe for (f) life, and after granteth the reverſion to the tenant for life, and to a ſtranger and to their heirs, they are not Joyntenants of the reverſion, but the reverſion is by act of law executed for one moiety in the Tenant for life, and for the other moiety he holdeth it ſtill for life, the reverſion of that moiety to the grantee.

(g) Weſtcots caſe, ubi ſupra.

And ſo it is, if a man maketh a leaſe (g) to two for their lives, and after granteth the reverſion to one of them in fee, the joynture is ſevered, and the reverſion is executed for the one moiety, and for the other moiety there is Tenant for life, the reverſion to the Grantee.

Ibidem 7.H.6.

If Leſſee for life granteth his eſtate to him in the reverſion, and to a ſtranger, the joynture is ſevered, and the reverſion executed for the one moiety by the act of Law.

ſeveral inheritances, car ſi lun des donees ad iſſue, & devy, lauter que ſurveſquiſt avera tout p le ſurvivor pur terme de ſa vie, & ſi celuy que ſurveſquiſt aury ad iſſue & devy, donques l'iſſue del un avera lun moitie, & iſſue del auter avera lauter moitie d la terre, & ils tiendront la terre enter eux ē common, & ne ſont pas joyntenāts, mes ſont tenants en common. Et la cauſe pur q̄ tielx donees en tiel cas ont joint eſtate pur terme de lour vies, eſt p̄ ceo que al commencemēt les fres ſuerōt dones a eux deux, les queux parols ſās pluis dire font joynt eſtate a eux pur terme de lour vies. Car ſi home voit leſſer fre a un auter p fait ouſans fait, nient feaſant mention q̄l eſtate il averoit, & de ceo fait liverie de ſeiſin, en ceo caſe le leſſee ad eſtate pur terme d ſa vie, & iſſint entant que les terres ſuerōt dones a eux, ils ont joint eſtate pur terme de lour vies: & la cauſe pur q̄ ils averont ſeveral enheritances eſt ceo, entant que ils ne poiēt aū p nul poſſibility the donees hath iſſue and die, the other which ſurviveth ſhall have the whole by the ſurvivor for term of his life, and if he which ſurviveth hath alſo iſſue and die, then the iſſue of the one ſhall have the one moiety, and the iſſue of the other, ſhall have the other moiety of the Land, and they ſhall hold the Land between them in Common, and they are not joyntenants but are tenants in common. And the cauſe why ſuch donees in ſuch caſe have a joynt eſtate for term of their lives, is, for that at the beginning the lands were given to them two, which words without more ſaying make a joynt eſtate to them for term of their lives. For if a man will let Land to another by deed or without deed, not making mention what eſtate he ſhall have, and of this make livery of ſeiſin, in this caſe the leſſee hath an eſtate for term of his life, and ſo in as much as the lands were given to them, they have a joynt eſtate for term of their lives, and the reaſon why they ſhall have ſeveral inheritances is this, in as much as they cannot by any

lity un heir enſ eux engender, ſicome hõe & feñ poient aver, &c. donqz la ley voet que lour eſtate & lour enheritance ſoit tiel cõe reason voet, ſolonqz la forme & effect des parols del done, & ceo eſt a les heirs q̃ lun engendza de ſon corps p aſt de ſes femes, & a les heirs q̃ lauter engẽdza õ ſon corps p aſt õ les femes, &c. Iſſint il covient p neceſſitie de reaſon que ils averont ſeverals inheritances. Et en tiel cas ſi iſſue dun des donees apres la mort des donees devie, iſſint q̃ il nad aſcun iſſue en vie de ſon corps engẽdre, donqz le donor ou ſon heire poit enter en la moity come en ſon reverſion, &c. coment q̃ lauť des donees ad iſſue en vie, &c. Et la cauſe eſt que entant q̃ les enheritances ſont ſeveral, &c. le reverſion de eux en ley eſt ſeveral, &c. & le ſurvivor del iſſue del auter ne tiendra pas lieu daver lentierť.

poſſibility have an heir between them ingendred, as a man and woman may have, &c. the Law will that their Eſtate and inheritance be ſuch, as is reaſonable, according to the form and effect of the words of the gift, and this is to the Heirs which the one ſhall beget of his body by any of his Wives, and to the heirs which the other ſhall beget of his body by any of his Wives, &c. So as it behoveth by neceſſity of reaſon that they have ſeveral inheritances. And in this caſe if the iſſue of one of the donees after the death of the donees die ſo that he hath no iſſue alive of his body begotten, then the donor or his heir may enter into the moiety as in his reverſion, &c. although the other donee hath iſſue alive, &c. and the reaſon is, for aſmuch as the inheritances be ſeveral, &c. the reverſion of them in Law is ſeveral, &c. and the ſurvivor of the iſſue of the other ſhall hold no place to have the whole.

If a man maketh a Leaſe for life and granteth the reverſion to two in fee, the leſſee granteth his eſtate to one of them, they are not Joyntenants of the reverſion, for there is an execution of the eſtate for the one moiety, and an eſtate for life, the reverſion to the other of the other moiety.

Here Littleton hath well reſolved a doubt, for of antient time it hath been ſaid, (h) That when lands have been given to two women, and to the heirs of their two bodies begotten (which caſe our Author putteth in the next Section) that the husband having iſſue ſhould be Tenant by the Courteſie living the other ſiſter, for that as ſome held the inheritance was executed, and that the ſiſters were Tenants in common in poſſeſſion, and conſequently the husband to be Tenant by the Curteſie, which he could not be if the woman had a joynt eſtate for term of their lives: and likewiſe it was ſaid (i) that the iſſue of the one ſhould recover the moiety in a Formedon uſing the other ſiſter. But, Verba ſunt hæc, and Littleton grounding himſelf upon good Authority in Law hath cleared this doubt.

(h) 17.E.3. 51.78. 18.E.3.39. 50.E.3. Statham tit. done. 50.E.3. Feoffments & faitz. 97.

(i) 44.E.3.tail 13. 8.Aſſ.33. 24.E.3.29. 7.H.4.16. Corbets caſe l.1.fo.8. 84. 6. 4.Mariæ Dier 145. See before in the Chap. of Ten. by the curteſie Section.

¶ *Nient feaſant mention quel eſtate il averoit.* Here Littleton addeth materially (not making mention of what eſtate) for (k) if in the premiſſes lands be letten, or a rent granted, the generall intendment is, that an eſtate for life paſſeth, but if the Habendum limit the ſame for years or at will, the Habendum doth qualifie the generall intendment of the premiſſes: And the reaſon of this is, for that it is a maxim in Law, That every mans grant ſhall be taken by conſtruction of Law moſt forcible againſt himſelf. Quæſibet conceſſio fortiſſimè contra donatorem interpretanda eſt, which is ſo to be underſtood that no wrong be thereby done, for it is another maxim in Law, Quod legis conſtructio non facit injuriam: And therefore if Tenant for life maketh a Leaſe generally, this ſhall be taken by conſtruction of Law,

(k) Pl.Com.in Throgmortons caſe.

Regula.

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an eſtate for his own life that made the leaſe, for if it ſhould be a Leaſe for the life of the Leſſee, it ſhould be a wrong to him in the reverſion. And ſo it is if Tenant in Tail make a Leaſe generally, the Law ſhall conſtrue this to be ſuch a Leaſe as he may lawfully make, and that is for term of his own life; for if it ſhould be for the life of the Leſſee, it ſhould be a diſcontinuance, and conſequently the ſtate which ſhould paſs by conſtruction of Law ſhould work a wrong.

¶ *Et iſſint entant que les terres fuerent dones a eux ils ount joynt eſtate pur lour vies.* This is plain, but with this exception, unleſs the Habendum doth otherwiſe limit the ſame. And therefore if a Leaſe be made (1) to two, Habendum to the one for life, the remainder to the other for life, this doth alter the generall intendment of the premiſſes, and ſo it hath been oftentimes reſolved. And ſo it is if a Leaſe be made to two habendum the one moiety to the one, and the other moiety to the other, the habendum doth make them tenants in Common, and ſo one part of the Deed doth explain the other, and no repugnancy between them, Et ſemper expreſſum facit ceſſare tacitum.

(1) 8.E.3.427.tit.Feoff. & Faits 73.30 H.8.tit. Joynt.Br.53.Dier.f.361 Pl.Com.160.

Bracton.

¶ *Per nul poſſibility.* Here it is to be obſerved, that where the grant is impoſſible to take effect according to the letter, there the Law ſhall make ſuch a conſtruction as the gift by poſſibility may take effect, which is worthy of obſervation. Benignæ faciendæ ſunt interpretationes cartarum propter ſimplicitatem Laicorum, ut res magis valeat quam pereat.

¶ *Iſſint il conviens per neceſſitie de reaſon.* The reaſon of the Law is the life of the Law, for though a man can tell the Law, yet if he know not the reaſon thereof, he ſhall ſoon forget his ſuperficial knowledge: but when he findeth the right reaſon of the Law and ſo bringeth it to his natural reaſon, that he comprehendeth it as his own, this will not only ſerve him for the underſtanding of that particular caſe, but of many other. For cognitio legis eſt copulata & complicata: And this knowledge will long remain with him, all which is plainly implied by the words, and (&c.) of our Author in this Section.

¶ *Et en tiel caſe ſi liſſue dun des Donees apres la mort des Donees devie iſſint que il nad aſcun iſſue en vie de ſon corps engendres, donques le Donor ou ſon heire poet enter en le moietie.* This is miſtaken in the imprinting, and varieth from the original, which is, Si lun Donee ou liſſue dun des Donees apres la mort des Donees devie, iſſint que il nad aſcun iſſue, &c. For it is evident, that if the one Donee himſelf dieth without iſſue, the Inheritance doth revert for a moiety, and after the decaſe of the other Donee, the Donor may enter into that moiety, and whether the iſſue of the one Donee dieth without iſſue at any time, either in the life of the other Donee, or after his decaſe, it is not material, for whenſoever no iſſue is remaining of the one Donee, ſo as the ſtate tail is ſpent, the Donor may after the decaſe of the ſurviving Donee, enter into that moiety.

¶ *Et la cauſe eſt, que entant que les inheritances, &c.* Littleton in this Chapter hath often ſaid, Et la cauſe eſt, which is worthy of obſervation, for then we are truly ſaid to know any thing, when we know the true cauſe thereof: Tunc unamquodque ſcire dicimur cum primam cauſam ſcire putamus: Scire autem propria eſt rem ratione & per cauſam cognoſcere.

Ariſt.1.Metaphyſ.

Virg.1.Georg.

Felix qui potuit rerum cognoſcere cauſas.

And therefore all Students of Law are to apply their principal endeavour to attain thereunto, all which is implied by the words, and ſeveral &c. in this Section.

Here the cauſe of the entry of the Donor into a moiety in this caſe is, That in as much as the Inheritance is ſeveral, the reverſion is ſeveral. Therefore upon the ſeveral determination of the eſtate in tail, the Donor may enter, and the Law termeth a reverſion to be expectant upon the particular eſtate, becauſe the Donor or Leſſor or their heirs after every determination of any particular eſtate, doth expect or look for to enjoy the Lands or Tenements again.

Dier 14.El.305.

¶ *Le reverſion de eux en ley eſt ſeveral, &c.* Hereby, and by this (&c.) is implied, that upon one joynt or entire gift or leaſe there is one joynt or entire reverſion, and upon ſeveral gifts or leaſes there be ſeveral reverſions. And this is to be underſtood of the reverſion in the Donor or his heirs. But albeit the gifts or leaſes be ſeveral, yet if the Donor or Leſſors grant the reverſion to two or more perſons and their heirs, they are Joyntenants of the reverſion And ſo it is of a Remainder, and therefore if a gift be made to two men and the heirs of their two bodies begotten, the remainder to them two and their heirs, they are Joyntenants for life, tenants in Common of the ſtate tail, and Joyntenants of the fee

fee ſimple in remainder, for they are Joynt purchaſers of the fee ſimple, and the remainder in fee is a new created eſtate, but the reverſion remaining in the Donor, or his heirs, is a part of his antient Fee ſimple.

Sect. 284.

¶ ET ſicome eſt dit de males, en meſme le manner eſt lou terre eſt done a deux females, & a les hẽes de lour deux corps engendres.

And as it is ſaid of males, in the ſame manner it is where land is given to two females, and to the heirs of their two bodies engendred.

¶ If a man giveth Lands to two men and one woman, and the heirs of their three bodies begotten. In this caſe they have ſeveral Inheritances, for albeit it may be ſaid, that the woman may by poſſibility marry both the men one after another, yet firſt ſhe cannot marry them both in preſenti, and the Law will never intend a poſſibility upon a poſſibility, as firſt to marry the one, and then to marry the other. Secondly, the form of the gift is, To the heirs of their three bodies, which is not poſſible, and therefore they ſhall have ſeveral Inheritances. And ſo it is, if a gift be made to one man and to two women, mutatis mutandis. In the ſame manner, if a gift in tail be made to a man and his mother, (m) or to a man and his Siſter, or to him and his Aunt, &c. in this and like caſes, albeit the gift is made to a man and a woman, yet they have ſeveral inheritances, becauſe they cannot marry together, and are within the rule and reaſon of our Author. 44.E.3.tit.Tail. 13. (m)18.E.3.39.7.H.4.16

Sect. 285.

¶ Item ſi terres ſoyent dones a deux & a les heires de lun de eux, ceo eſt bone Jointure, & lun ad franktenemẽt, & lauter ad fee ſimple: Et ſi celuy que ad le fee devie, celuy que ad le franktenement avera lentiertie per le ſurvivor pur terme de ſa vie. En meſme le manner eſt, lou tenements ſont dones a deux & les heires del corps dun de eux engendrs, lun ad franktenement, & lauter ad fee taile, &c.

Alſo if lands be given to two and to the heirs of one of them, this is a good Joynture, and the one hath a Freehold, and the other a fee ſimple: And if he which hath the fee dieth, he which hath the freehold ſhall have the entierty by ſurvivor for term of his life. In the ſame manner it is, where tenements be given to two & the heirs of the body of one of them engendred, the one hath a freehold, & the other a fee tail, &c.

¶ By this Section, and the (&c.) in the end of it, they are Joyntenants for life, and the Fee ſimple or eſtate tail is in one of them, and becauſe it is by one and the ſame conveyance, they are Joyntenants, and the fee ſimple is not executed to all purpoſes, as hath been ſaid before.

If a fine be levied to two, (n) and to the heirs of one of them, by force whereof he is ſeiſed, he that hath fee dieth, and after the Joyntenant for life dieth, and an eſtranger abates, in this caſe the heir may either ſuppoſe the fee ſimple executed, and have an aſſiſe of Mortdanceſter, the words of which writ be, Si R. pater ſuus ſeiſitus die quo obiit in dominico ſuo ut de feodo, which cannot be ſaid of him that hath but a remainder expectant upon an eſtate for life, but in reſpect that he is ſeiſed of a fee ſimple and of a joynt eſtate in poſſeſſion, the words in the writ be true, That he was ſeiſed in Dominico ſuo ut de feodo. Likewiſe the heir may have a writ of right, which alſo in ſame ſort proves the fee ſimple executed, or the heir may have a Scire facias to reverſe the fine, by which the heir ſuppoſeth that (n) 42.E.3.9.10.11.H.4. 55.31.E.3.Scire facias 19.29.H.8. Mortd.b.59. 4 E.3.37. F.N.B.196. & 219. 4.E.3.Itinere Derby. 24.E.3.70.

that the fee was not executed, or he may maintain a writ of intrusion where the heir maketh the like supposition, and shall term it a remainder. And yet when land is given to two and to the heirs of one of them, he in the remainder cannot grant away his fee simple, as hath been said.

Sect. 286.

¶ *Claimer riens per discent de son compagnion, &c.* By which (&c.) is implied, That so it is if one Joyntenant acknowledge a Recognisance or a statute, or suffereth a judgment in an action of debt, &c. and dieth before execution had, it shall not be executed afterwards. But if execution be sued in the life of the Conusor, it shall bind the surbisor, and it is further implied, That both in the case of the Charge and of the Recognisance, statute, and judgment, if he that chargeth, &c. surbide, it is good for ever.

F.N.B. 204. E. 207. 7. H. 6. 2. 13. H. 7. 22. 10. E. 3. 34. 17. R. 2. tit. Charge 15. 5. H. 5. 8. Vide Sect. 289.

(o) 9. H. 6. 52.

And so it is (o) if a man be possessed of certain lands for term of years in the right of his wife, and granteth a Rent charge, and dieth, the wife shall avoid the charge, but if the Husband had surbided, the charge is good during the term.

(p) 8. E. 3. tit. Execution Statham.

If a Villain purchase lands, and bind himself in a Recognisance, if the Lord enter before execution, the Lord shall avoid the same, as it hath been said.

But otherwise it is if he had made a Lease for years, for the reason that Littleton here yieldeth in this Section.

(q) 14. H. 8. 12. Pl. Com. 263. b. in Dame Hales case.

If two Joyntenants of a term, (q) and the one of them grant to I. S. that

Item si deux ioyntenants sont seisies destate en fee simple, & lun graunt un rent charge per son fait a un auter hors de ceo, que a luy affiert, en cest case durant la vie le Grantor, le rent charge est effectual: Mes apres son decesse l' grant de l' rent charge ẽ void, quant a charger la tre, car celuy que ad la terre per le surviror tiendra tout la terre discharge. Et la cause est, pur ceo que celue que survesquist claima & ad la tre per le surviror, & nemy ad, ne poet de ceo clayme rien per discent de son compaignion, &c. Mes autrement est de Parceners, car si soient deux Parceners des tenemẽts en fee simple, & devant ascun partition fait, lun charge ceo que a luy affiert per son fait, dun rent charge, &c. et puis mourust sans issue, per que ceo, que a luy affiert discẽd a lauter Parcener, en cest case lauter parcener tiendra la terre charge, &c. pur ceo que il vient a cel moity per discent, come heire, &c.

Also if two Joyntenants be seised of an estate in fee simple, and the one grants a Rent charge by his deed to another out of that which belongeth to him: in this case during the life of the grantor, the Rent charge is effectual, but after his decease the grant of the Rent charge is void, as to charge the Land, for he which hath the Land by survivor, shall hold the whole Land discharged. And the cause is, for that he which surviveth claimeth and hath the Land by the survivor, and hath not, nor can claim any thing by descent from his companion, &c. But otherwise it is of Parceners, for if there be two Parceners or Tenements in fee simple, and before any partition made the one chargeth that which to her belongeth by her deed, with a Rent charge, &c. and after dieth without issue, by which that which belongeth to her descends to the other parcener, in this case the other parcener shall hold the land charged, &c. because she came to this moiety by descent, as heir, &c.

If

if he pay to him ten pound before Michaelmas, that then he shall have his term, the Grantor dieth before the day, I. S. pays the summe to his Executors at the day, yet he shall not have the term, but the Surbidor shall hold place, for it was but in nature of a communication, but if he had made a Lease for years, to begin at Michaelmas, it should have bound the Surbidor.

And where Littleton putteth the case of a Rent charge, it is so likewise implied, that if one Joyntenant granteth a Common of Pasture, or of Turbary, or of Estovers, or a Corody, or such like out of his part, or a way over the Land, this shall not bind the Surbidor: for it is a maxim in Law, that Jus accrescendi præfertur oneribus, and there is another maxim, that Alienatio rei præfertur juri accrescendi. 45.E.3.13. Vide Sect. 289.

If one Joyntenant in Fee simple be indebted to the King, and dieth, (r) after his decease no extent shall be made upon the Land in the hands of the Surbidor. (r) 40.Ass.36.50.Ass.35 F.N.B 149. q.Pl. Com.321.

If a recovery be had against one Joyntenant, who dieth before execution, the Surbidor shall not avoid this recovery, because that the right of the moiety is bound up in it.

If one Joyntenant in fee take a Lease for years of an estranger by Deed indented and dieth, the Surbidor shall not be bound by the Conclusion, because he claims above it, and not under it.

¶ *Et la cause est pur ceo que celuy que survesquist claime & ad la terre per survivor, &c.* Here again Littleton sheweth the reason: and the cause wherefore the Surbidor shall not hold the Land charged, is, for that he claimeth the Land from the first Feoffor, and not by his companion, which is Littletons meaning when he saith, (that he claimeth by Surbidor.) For (s) the surviving Feoffee may plead a feoffement to himself without any mention of his joynt feoffee. And this is the reason, that if two Joyntenants be in fee, and the one maketh a Lease for years, reserving a Rent and dieth, the surviving Feoffee (t) shall have the Reversion by Surbidor, but he shall not have the Rent because he claimeth in from the first Feoffor, which is paramount the rent. If there be two Joyntenants in fee, and the one Joyntenant granteth a rent charge out of his part, and after releaseth to his joynt companion and dieth, he shall hold the land charged, for that he is out of the reason and cause set down by Littleton, because he claimeth not by Surbidor, in as much as the release prevented the same. And of this opinion was Littleton himself (u) before the Edition of his Book. But all men agree, that if A. B. and C. be Joyntenants in Fee, and A. chargeth his part, and then releaseth to B. and his heirs, and dieth, that the (w) charge is good for ever, because in that case B. cannot be in from the first Feoffor, because he hath a joynt companion at the time of the release made, and several writs of Præcipe must be brought against them. And albeit the release of one Joyntenant to the residue of the joyntenants makes no degree in supposition of Law, neither is there any several estate between them, but the estate of him that releaseth is as it were extinguished and drowned in their estate and possession, so as one Præcipe lieth against them, yet shall they hold the Land charged as is aforesaid. As if tenant for life grant a Rent charge, and after surrendereth his estate to the Lessor, albeit the estate charged be drowned, and the Lessor is not in by him, yet he shall hold it charged. (s) 14.E.4.1.b. 18.E.2. briefe 830.8.E.2.cnt.77 13.E.3.28.38.E.3.26. 8.H.6.25. Vide 46. E.3. 77. 35 H.6.39. (t) Di.Mich. 2.& 3.El. 187.Lib.1.fo.96. Vide Lib.6.fo.72.79. (u) 33.H.6.5.a. 9.El.Dier 263. (w) 37.H.8.tit.alienati. Br.31. 10.E.4.3.b. 40.E.3.41.b. 33.H.6.5. 22.H.6.42.b.per Pole. 35.E.3.release 43. 33.E.3.avowry 195. 14.H.8.2.

¶ *Mes auterment est de Parceners, Car si sont deux Parceners, &c.* This is to be intended as well of Parceners by custom as of parceners by the common law, and here is implied the reason of the diversity, for that the Surbidor doth claim above the charge, and the heir by descent under the charge.

Sect. 287.

¶ Item si sont deux Joyntenants des terres en Fee simple deins un burgh, lou les terres & tenemts sont devisables per testament, & si lun de les dits deux Joyntenants devise ceo que a luy affiert per son

ALso if there be two Joyntenants of Land in Fee simple within a Burrough, where Lands and Tenements are devisable by testament, and if the one of the said two Joyntenants deviseth that which to him be-

¶ *Per son testament, &c.* Either in writing, or nuncupative, according to the custom.

¶ *Et la cause est pur ceo que nul devise, poit prender effect mes apres le mort le devisor & per sa mort tout la terre maintenant devient per la ley a son compagnion, &c.*

&c. Here both their claims commence at one inſtant, and although an Inſtant, Eſt unum indiviſibile tempore quod non eſt tempus nec pars temporis, ad quod tamen partes temporis connectuntur, and that, Inſtans eſt finis unius temporis, & principium alterius: yet in conſideration of law there is a priority of time in an inſtant, as here the Survivor is preferred before the deviſe, for Littleton ſaith, that the cauſe is that no deviſe can take effect till after the death of the deviſor, and by his death all the Land preſently cometh by the Law to his companion. whereby it appeareth, that Littleton by theſe words, Poſt mortem, & per mortem, though they jump at one inſtant, yet alloweth priority of time in the inſtant which be diſtinguiſheth by per and poſt. And the reaſon of this priority is, that the Survivor claimeth by the firſt feoffor (as hath been ſaid) and therefore in judgment of Law his Title is Paramount, the title of the Deviſee, and conſequently the Deviſe void, and the rule of Law is, that, Jus accreſcendi præfertur ultimæ voluntati.

P. Com. in Fulmerſtons c ſ.

teſtament, &c. & mort; ceo deviſe eſt voide. Et la cauſe eſt pur ceo que nul deviſe poit prender effect, mes apres la mort le deviſor, & per la mort tout la terre maintenant devient per la ley a ſon companion, que ſurveſquit per le ſurvivor, le quel il ne claime, ne ad riens en la terre per my le deviſor, mes en ſon droit demeine p le ſurvivor, ſolonque le courſe de ley, &c. & pur cel cauſe tiel deviſe eſt voide. Mes auterment eſt de Parceners ſeiſies des tenements deviſables en tiel caſe de deviſe, &c. Cauſa qua ſupra.

longeth by his Teſtament, &c. and dieth, this deviſe is void. And the cauſe is for that no deviſe can take effect till after the death of the deviſor: and by his death all the Land preſently cometh by the Law to his companion, which ſurviveth by the Survivor, the which he doth not claim, nor hath any thing in the Land by the Deviſor, but in his own right by the Survivor, according to the courſe of Law, &c. and for this cauſe ſuch deviſe is void. But otherwiſe it is of Parceners ſeiſed of Tenements deviſable in like caſe of deviſe, &c. *Cauſa qua ſupra.*

¶ Two Femes, Joyntenants of a Leaſe for years, one of them taketh husband and dieth, yet the term ſhall ſurvive, for though all Chattels reals are given to the husband, if he ſurvive, yet the Survivor between the Joyntenants is the elder title, and after the marriage the feme continued ſole poſſeſſed, for if the husband dieth, the feme ſhall have it, and not the Executors of the husband, but otherwiſe it is of perſonal goods.

1.H.5.executors 108. If a man be ſeiſed of a houſe, and poſſeſſed of divers heirlomes, that by cuſtom have gone with the houſe from heir to heir, and by his will deviſeth away the heirlomes, this deviſe is void, for as Littleton here ſaith, the will taketh effect after his death, and by his death the heirlomes by antient cuſtom are veſted in the heir, and the Law preferreth the cuſtom before the Deviſe. And ſo it is if the Lord ought to have a Herriot when his tenant dieth, and the Tenant deviſeth away all his goods, yet the Lord ſhall have his Herriot for the reaſon aforeſaid. And it hath been antiently ſaid, that the Herriot ſhall be paid before the Mortuary.

(x) Fleta l.2.c.50. Bracton l.2.fo.60. Britton fo.178. (x) Imprimis autem debet quiliber qui teſtaverit, dominum ſuum de meliore re quam habuerit recognoſcere, & poſtea Eccleſiam de alia meliore, &c. wherein the Lord is preferred, for that the tenure is of him. This duty to the Lord is very antient, for in the Laws before the conqueſt it is ſaid, Sive quis incuria, ſive morte repentina fuerit inteſtat' mortuus, dominus tamen nullam rerum ſuarum partem (præter eam quæ jure debetur herioti nomine) ſibi aſſumito.

Lamb.fo.119. 68. In the Saxon tongue it is called Heregeat, as much to ſay (as I take it) as the Lords beſt, for Here is Lord, and geat is beſt. But let us return to Littleton.

¶ *Mes auterment eſt de parceners ſeiſies des tenements deviſable en tiel caſe del deviſe, &c.* Cauſa qua ſupra.

The reaſon is evident, for that there is no ſurvivor between Coparteners, but the part of the one is deſcendible, and conſequently may be deviſed.

Sect.

Sect. 288.

¶ Item il est comunement dit, q̄ chescū ioyntenant est seisie de la terre q̄ il tient ioyntment, per my et per tout, et ceo est autant adire, q̄ il est seisie p̄ chescun parcel, et p̄ tout, &c. et ceo est voier, car en chescun parcel, et per chescun parcel, et per touts les terres et tenements il est ioyntment seisie ouesq; son companion.

ALso it is commonly said, that every joyntenant is seised of the Land which he holdeth joyntly *Per my & per tout*, and this is as much to say as he is seised by every parcel and by the whole, &c. and this is true, for in every parcel, and by every parcel, and by all the Lands and Tenements he is joyntly seised with his compan'on.

¶ *Item est communement dit, &c.* That is, it is the common opinion, and Communis opinio is of good authority in Law, A communi observantia non est recedendum, which appeareth here by Littleton. Vide Sect. 697.

¶ *Per my & per tout.* Et sic totum tenet & nihil tenet, s. totum conjunctim, & nihil per se separatim. And albeit they are so seised (as for example where there be two joyntenants in fee) yet to divers purposes each of them hath but a right to a moiety, as to enfeoffe, give, or demise, or to forfeit or lose by default in a Præcipe. If my villain (y) and another purchase Lands to them two and their heirs, I may enter into a moiety. Vide Bract. l. 5. fo. 430. Britton c. 35. Fleta l. 3. c. 4. 40. E. 3. 40. 18 E. 2. bre. 831. 35. H. 6. 39. Vide the second part of the Institutes upon the 6 Chapter of the Statute De bigamis. Fleta l. 1. c. 28. 40. Ass. 79. 48. E. 3. 16. (y) Vid. 6. E. 3. 4. 7. E. 4. 29. 11. El. Di. 183.

And where all the Joyntenants joyn in a feoffment, every of them in judgment of Law do give but his part. If an alien and a subject purchase Lands joyntly, the King upon office found shall have but a moiety. And Littleton after wards in this Chapter saith that one joyntenant hath one moiety in Law, and the other the other moiety And therefore if two joyntenants be (z) and both they make a feoffment in fee upon condition, and that for breach thereof one of them shall enter into the whole, yet he shall enter but into a moiety because no more in judgment of Law passed from him: and so it is of a gift in tail or a lease for life, &c. (z) Pl. Com. in Brownings case, fo.

Yet every joyntenant may warrant the whole, (a) because a man may warrant more then passeth from him. (a) Vide the second part of the Institutes upon the 6. chapter of the Statute of Bigamis.

If two joyntenants make a feoffment in fee (b) and one of the Feoffors dis, the Feoffee cannot plead a feoffment from the survivor of the whole, because each of them gave but his part, but otherwise it is on the part of the Feoffees, as hath been said before. (b) 14. E. 4. 5. and the other Books aforesaid

And where two Joyntenants be, the one of them (c) may make the other his Bailiff of his moity, and have an Action of Account against him. And one joyntenant (d) may let his part for years or at will to his companion. (c) 21. E. 3. 60. (d) 11. H. 3. 60. 33.

If two Joyntenants be of certain lands, and the one of them by Deed indented (e) bargaineth and selleth the lands, and the other joyntenant dieth, and then the Deed is inrolled, there shall pass nothing but the moiety which the bargainor had at the time of the bargain. (e) 6. E. 6. tit. Faits inroll. 9. Br.

Sect. 289.

¶ Item si deux ioyntenants sont seisies de certaine terres en fee simple, q̄ lun lessa ceo que a luy affiert a un estranger pur terme de 40 ans, q̄ debie devant le term com-

ALso if two Joyntenants be seised of certain Lands in fee simple, and the one letteth that to him belongeth to a stranger for term of forty years, and dieth before the

¶ *Per force de mesm' le dit lease, &c.*

By this (&c.) is implied, That where our Author speaketh of joyntenants seised in fee, that so it is if two be seised for life, and one make a lease to begin presently, or in (f) Vid. Sect. 286. & 666 & Sect. 2.

in future, and dieth, this Leaſe ſhall bind the ſurvivor, as it hath been adjudged.

(g) 11.H.4.90.14.H.8.6. 17.E.4.6.2. 9.H.6.52. 21.H.7.20. 14.H.7.4. 18.E.3.Execution 56. 11.El.Di285.P.Cō.160. a. Temps E.1 Aſſ.422. 20.H.6.4. 7.H.7.13. 10.H.7.24.

(g) And if one joyntenant grant veſtuam terræ, or hebdagium terræ, for years & dieth, this ſhall bind the ſurvivor, for ſuch a Leſſee hath right in the land. So it is if two Joyntenants be of a waſte, and the one granteth the ſeveral Piſcary.

¶ *Lun leſſa.*

The one letteth. If two joyntenants be of an advowſon, and (h) the one preſenteth to the Church, and his clerk is admitted and inſtituted, this in reſpect of the priority ſhall not put the other out of poſſeſſion, but if that Joyntenant that preſenteth dieth, it ſhall ſerve for a title in a quare impedit brought by the ſurvivor. But yet if one joyntenant or tenant in Common preſent, or if they preſent ſeverally, the Ordinary may either admit or refuſe to admit ſuch a preſentee, unleſs they join in preſentation, and after the ſix months he may in that caſe preſent by lapſe.

(h) 6.E.3.38.39 52. 7.E.3.20.21.17.E.3.37. b. 22.E.3.9. 30. E.3.16. 11 H.4.54 15.E.3.Dar. preſentment 11. 10.E.4. 94. 1 H.7.1.b.2.R.3. Qua Imp.102.5.E'.Dier 259.36.H.8.Br.Preſent. 27.H.8.fo.11. 5.H.7.8. 6.E.4.10.b.Doct.& Stu. 116.34.H.6.40.20.E.3. Qua.Imp 63.F.N.B. 34. V.

But if two or more Coparceners be, (i) and they cannot agree to preſent, the eldeſt ſhall preſent, and if her ſiſter doth diſturb her, ſhe ſhall have a Quare impedit againſt her, and ſo ſhall the iſſue and the aſſignes of the eldeſt, and yet he is tenant in common with the youngeſt. And in the ſame manner the tenant by the Curteſie of the eldeſt ſhall preſent; but if there be four Coparceners and the eldeſt and the fourth preſent, and the other two preſent jointly or ſeverally, the Ordinary may refuſe them all, for the eldeſt did not preſent alone, but the and one other of her ſiſters. But now let us return to Littleton.

(i) Bract.l.4.f.238.245 247.Brit.fo.222. 45.Ed. 3. Fines 41.18.E.2.Qua. Imp.176. 38.H.6.9. 19.E.3.ib.59.5.H.5.10. F.N.B 34.V.

mence, ou deins le ſme, en ceſt caſe apres ſon deceaſe le Leſſee poit enter & occupier la moity a luy. leſſe durant le terme, &c. coment que le Leſſee navoit unqs poſſeſſion de ceo en la vie le Leſſor, per force de meſme le leaſe, &c. Et le diverſitie perenter le caſe de grant de Rent-charge avantdit, & ceſt caſe eſt ceo, car en grant de Rent charge p̄ joyntenant, &c. les Tenemēts demurgent touts foits come ils fueront advant, ſans ceo que aſcun ad aſcun droit daver aſcun parcel de les tenements forſque eux meſmes, & les Tenements ſont en tiel plyte, come ils fueront devant le charge, &c. Mes ou Leaſe eſt fait per un Joyntenant a un auter pur terme des ans, &c. maintenaunt per force de le Leaſe le leſſée addroit en meſme la terre, ceſtaſcavoir de tout ceo que a ſon leſſour affiert & daver ceo per force de meſme le Leaſe durant ſon terme. Et ceo eſt la diverſitie.

term beginneth, or within the term, in this caſe after his deceaſe the Leſſee may enter and occupy the moiety let unto him during the term, &c. although the Leſſee had never the poſſeſſion thereof in the life of the Leſſor, by force of the ſame Leaſe, &c. And the diverſity between the caſe of a grant of a rent charge aforeſaid, and this caſe is this, for in the grant of a Rent charge by a Joyntenant, &c. the tenements remain always as they were before, without this that any hath any right to have any parcel of the tenements but they themſelves, and the tenements are in the ſame plight as they were before the charge, &c. But where a Leaſe is made by a Joyntenant to another for term of years, &c. preſently by force of the Leaſe, the Leſſee hath right in the ſame Land, (*videlicet*) of all that which to the Leſſor belongeth, and to have this by force of the ſame Leaſe, during his term. And this is the diverſity.

Sect.

Sect. 290.

¶ Item iointenants ſils voilent poient faire partition enter eux, & la partition eſt aſſets bon, mes de ceo faire ils ne ſerront compels per la ley. Mes ſils voilent faire partition de lour propre voluntie & agreement, le partition eſtoiera en ſa force.

ALſo Joyntenants (if they will) may make partition between them, and the partition is good enough, but they ſhall not be compelled to do this by the Law, but if they will make partition of their own will and agreement, the partition ſhall ſtand in force.

¶ *Poient faire partition.* But this partition muſt be (k) by Deed as hath been ſaid before. But Joyntenants for years may (l) make partition without Deed.

(k) Vid. Sect. 259. 318.

(l) 18. El. Dier 350.

¶ *Ils ne ſerra compell.* This is true regularly, but by the cuſtom of ſome Cities and Burroughs one Joyntenant or Tenant in Common may compel his companion by Writ of partition grounded upon the cuſtom to make partition. But ſince Littleton wrote, Joyntenants and Tenants in Common generally are compellable to make partition by Writ framed upon the Statutes of (m) 31. & 32. H. 8. as before hath been ſaid. And albeit they be now compellable to make partition, yet ſeeing they are compellable by writ, they muſt purſue the Statutes, and cannot make partition by Parol, for that remains at the common Law. And by Littletons Authority herein it ſeemeth to me that if one Joyntenant or Tenant in Common diſſeiſe another, and the Diſſeiſee bring his Aſſiſe for the moiety, that in this caſe, though the Plaintiff prayeth it, yet no judgment ſhall be given to hold in ſeverality, for then at the Common Law there might have been by compulſion of Law a partition between Joyntenants and Tenants in Common, and by rule of Law the Plaintiff muſt have judgment according to his plaint or demand.

F.N.B. 62. b.

(m) 31. H. 8. c. 1. 32. H. 8. ca. 32. Vid. Sect. 264. 247 259. Mich. 16. & 17. El. 1. 340. Inter Harris & Eden adjudge. acc. 18. El. Dier 350. b. Vide before in the Chapter of Partition, many books cited concerning this matter. 3. E. 3. 48. F.N.B. 9. b. 7. Aſſ. 10. 7. E. 3. 29. 10. Aſſ. 17. 10. E. 3. 40. 43 12. Aſſ. 15. 17. 12. E. 3. & judgment 162. 20. E. 3. Aſſ. 62. 28 Aſſ. 35. 23. Aſſ. 10. 7 H. 6. 6. 4. 19. H. 6. 45. 3. E. 4. 10. Vi. Sect. 247. Brit. fo. 112 Lib. 6. fo. 12. & 13. Mortices caſe.

If two Joyntenants be (n) of Land with warranty, and they make partition by writing, the warranty is deſtroyed, but if they make partition by Writ of Partition upon the Statute, the warranty remains becauſe they are compellable thereunto.

(n) 29. E. 3. tit. Garr.

Sect. 291.

¶ Item ſi un ioynt eſtate ſoit fait de tre a le baron & a ſa feme & a un tierce perſon, en ceo cas le baron & ſa feme nont en ley en lour droit forſque le moitie, &c. & le tierce perſon avera tant come le baron & ſa feme ont, s. lauter moitie, &c. Et la cauſe eſt, pur ceo que le baron & ſa feme ne ſont forſque un perſon en

ALſo if a joynt eſtate be made of Land to Husband and Wife, and to a third perſon, in this caſe the husband and wife have in Law in their right but the moity, and the third perſon ſhall have as much as the husband and wife, *viz.* the other moity, &c. And the cauſe is, for that the husband and wife are but one perſon in

¶ *Le baron & ſa feme nont en ley en lour droit forſque le moitie, &c.* William Ocle and Joan his Wife (o) purchaſed Lands to them two and their heirs, after William Ocle was attainted of high treaſon for the murther of the kings father, E. 2. and was executed, Joan his wife ſurvived him, E. 3. granted the Lands to Stephen de Bitterly and his heirs. John Hawkins the heir of the ſaid Joan in a Petition to the King diſcloſeth this whole matter and upon a Scire fac' againſt the Parentee hath judgment to recover the Lands

(o) Mich. 33. E. 3. Coram Rege Salop. in Theſaur.

Lands, for the reason here yielded by our Author.

Vide Sect. 665.

But if an estate be made to a man and a woman & their heirs before marriage, and after they marry, the husband and wife have moities between them, which is implied in these words of our Author, Baron & sa feme.

¶ *Forsque un person en ley.* Bracton saith (p) Vir & uxor sunt quasi unica persona, quia caro una & sanguis unus. It hath been said, that if a release be granted to a man and a woman and their heirs, and before attornment they entermarry, and then attornment is made, that the husband and wife shall have no moities, in this case no more then if a Charter of Feoffement be made to a man and a woman, with a Letter of Attorny to make Livery, they entermarry, and then Livery is made secundum formam chartæ, in which case it is said, that they have no moities. But certain it is, that if a Feoffment were made before the stat. of 27. H. 8 of uses to the use of a man (q) and a woman, and their heirs, and they entermarry, and then the Statute is made, if the husband alien it is good for a moity, for the Statute executes the possession according to such quality, manner, form, and condition, as they had in the use, so as though it vest during the coverture, yet the Act of Parliament executes several moities in them, seeing they had several moities in the use.

(p) Bract. l. 5. fo. 416. 20. H. 3. Discent 52. Lib. 4. fo. 68. Tokers case Pl. Com. 483. Nichols case.

(q) 4. Mar. Dier 149. 3. Mar. Dier 122. 29. H. 8. Dier 32.

(r) 40. Ass. p. 7.

If an estate be made to a Villain and his wife (r) being free, and to their heirs; albeit they have several capacities, viz. the Villain to purchase for the benefit of the Lord, and the wife for her own, yet if the Lord of the Villain enter, and the Wife survive her husband, she shall enjoy the whole Land, because there be no moities between them.

A man makes a Lease to A. and to a Baron and Feme, viz. to A. for life, to the husband in tail, and to the Feme for years, in this case it is said, That each of them hath a third part in respect of the severalty of their estates.

If a Feoffment be made to a man and a woman and their heirs with warranty (f) and they entermarry, and after are impleaded and vouch and recover in value, moities shall not be between them, for though they were sole when the warranty was made, notwithstanding at the time when they recovered and had execution they were husband and wife, in which time they cannot take by moities.

(f) Pl. Com. 483. Nichols case.

10. H. 7. 20.

Albeit Baron and Feme (as Littleton here saith) be one person in Law, so as neither of them can give any estate or interest to the other; yet if a charter of feoffment be made to the wife, the husband as Attorny to the feoffor may make livery to the wife, and so a release to divert that hath power to sell Land by will, may sell the same to her husband, because they are but Instruments for others, and the state passeth from the feoffor or Devisor.

(t) 11. E. 3. Cui in vita 9. 16. E. 3. ib. 36. E. 3. ib. 20. 35. Ass. pl. 15. 31. H. 6. tit. Ent. Conges. 54. 19. H. 6. 45. F. N. B. 193. k.

If a husband, wife, and a third person purchase Lands to them and their heirs (t) and the husband before the Statute of 32. H. 8. c. 1. had alened the whole land to a stranger in fee, and died, the wife, and the other Joyntenant were Joyntenants of the right, and if the wife her

¶ *Pluis serra dit del mater touchant ioyntenancy, en le chapter de tenants en common, & tenant per Elegit, & tenant per Statute Merchant.*

More shall be said of the matter touching Joyntenancy in the Chapter of Tenants in Common, and Tenant by Elegit, and Tenant by Statute Merchant.

had died, the other Joyntenant should have had the whole right by survivor, for that they might have joyned in a Writ of Right, and the discontinuance should not have barred the entry of the survivor, for that he claimed not under the discontinuance, but by title paramount above the same by the first feoffment, which is worthy of observation. But if the husband had made a feoffment in fee but of the moiety, and he and his wife had died, their moiety should not have survived to the other.

And for the better understanding of this diversity divers things are worthy of observation.

First, That a right of action, and a right of entry may stand in Joynture, for as the common law the alienation of the husband was a discontinuance to the wife of the one moiety, and a disseisin of the other, so as after the death of the husband, the wife hath a right of Action to the one moiety, and the other Joyntenant a right of entry into the other, but they are Joyntenants of the right, because they may joyn in a Writ of Right. Vid. Sect. 302.

Secondly, That a right of Action or a bare right of entry cannot stand in joynture with a freehold or Inheritance in possession, and therefore if the husband make a feoffment of the moiety, this was a discontinuance of that moiety, * and the other Joyntenant remained in possession of the Freehold and Inheritance of the other moiety, which for the time was a severance of the Joynture, and so are all the Books which seemed to vary amongst themselves, clearly reconciled.

* Vide the Statute of 32 H.8.c. it is no discontinuance at this day.

If two Joyntenants be of a rent, and the one of them disseise the Tenant of the Land, (u) this is a severance of the Joynture for a time, for the moiety of the rent is suspended by unity of possession, and therefore cannot stand in Joynture with the other moiety in possession. And this is to be observed, that there shall never be any survivor, unless the thing be in joynture at the instant of the death of him that first dieth: for the rule is, Nihil de re accrescit ei qui nihil in re quando jus accresceret habet. (u) Pl. Com. 419 m. Bratchbridges case.

Also if a man demiseth Lands to two, to have and to hold the one for life, and the other for years, they are no Joyntenants, for a state of freehold cannot stand in Joynture with a term for years: and a reversion upon a Freehold cannot stand in joynture with a Freehold and Inheritance in possession, as shall be said in the next Chapter. Neither can a sisin in the right of a politick capacity, stand in joynture with seisin in a natural capacity, as shall be said hereafter. 46.E.2.21. 19.H.6.45. 37.H.8 8. 3.E.4.10.

If two Femes be joyntly seised, and they take Barons, and the Barons joyn in an alienation and die, the wives are joyntenants of the right, and may joyn in a Writ of Right, and yet they may have several writs of Cui in vita at their election, but when they have recovered in those several writs, they shall be joyntenants again. But if the Barons had aliened severally, this had been a severance of the Joynture for a time, for the reason aforesaid.

If two Joyntenants, the one for life, and the other in fee join by default, the one shall have a writ of right, and the other a Quod ei deforceat, and yet when they have severally recovered, they shall be joyntenants again. So it is if two Joyntenants be disseised, and an Assise is brought, and the one is summoned and severed, and the other recover the moiety, and after another Assise is brought, and he that recovereth is summoned and severed, and the other recover, albeit they severally recover, yet they are Joyntenants again.

So in all cases where the Joyntenants pursue one joynt remedy, and the one is summoned and severed, and the other recover, he that is summoned and severed shall enter with him: but where their remedies be several, there the one shall not enter with the other, till both have recovered and the same Law is of Coparceners. If I. Stiles (a) be demiseth for life, the remainder to the right heirs of I. S. and of I. N. I. S. hath issue and dieth, and after I. N. hath issue and dieth, the issues are not Joyntenants, because the one moiety vested at one time, and the other moiety vested at another time. And yet in some cases there may be Joyntenants, and yet the estate may vest in them at several times. Vide Lit. cap. Remitter, the last case. 10.H.6.10.31.H.6.tit. Entre congeable 46.E 3 21.b.3.E.4.10.37.H.6.8 w) 24.E.3.29.18.E.3.28 38.E.3.

If a man (x) make a feoffment in fee to the use of himself and of such wife as he should after marry, for term of their lives, and after he marry wife, they are Joyntenants, and yet they come to their estates at several times. (x) 17.El. Dier Brents case.

And so it is if I disseise one to the use of two, and the one agrees at one time, and the other at another, yet they are Joyntenants.

In this Section are three (&c.) the first and second are at large explained before, the last is intended where more parties take then three.

Chap.

Chap. 4. Of Tenants in Common. *Sect.* 292.

¶ Tenants en Common ſont ceux, que ont terres ou tenements en Fee ſimple, Fee taile, ou pur terme de vie, &c. les queux ont tielx terres ou Tenements per ſeveral titles, & nemy per ioynt title, et nul de eux ſcavoit de ceo ſon ſeveral, mes ils doient per la Ley occupier tielx terres ou Tenements en Common, & pro indiviſo a prender les profits en common. Et pur ceo que ils avienderont a tielx terres ou tenements per ſeveral titles et nemy per un ioynt title, et lour occupation et poſſeſſion ſerra p la ley perenter eux en common, ils ſont appels Tenaunts en Common. Sicome un home enfeoffa deux Joyntenants en fee, et lun de eux alien ceo que a luy aſſert a un auter en fee, ore le alienee et lauter Joyntenant ſont Tenants en Common, pur ceo que ils ſont eins en tielx Tenements per ſeveral titles, car lalienee vient eins en la moitie per la feoffement dun des Joyntenants, et lauter Joyntenant ad lauter moitie, per force de le primer Feoffment fait a luy, et a ſon compaignon, &c. Et iſſint ils ſont eins per ſeveral titles, ceſtaſcavoir, per ſeveral Feoffements, &c.

TEnants in Common are they which have Lands or Tenements in Fee ſimple, Fee tail, or for term of life, &c. and they have ſuch Lands or Tenements by ſeveral Titles, and not by a joynt Title, and none of them know of this his ſeveral, but they ought by the Law to occupy theſe Lands or Tenements in Common, and *pro indiviſo*, to take the profits in Common. And becauſe they come to ſuch Lands or Tenements by ſeveral Titles, and not by one joynt title, and their occupation and poſſeſſion ſhall be by Law between them in Common, they are called Tenants in Common. As if a man infeoffe two Joyntenants in fee, and the one of them alien that which to him belongeth, to another in Fee, now the Alienee and the other Joynenant are Tenants in Common, becauſe they are in in ſuch teſements by ſeveral titles, for the Alienee cometh to the moiety by the Feoffement of one of the Joyntenants, and the other Joyntenant hath the other moiety by force of the firſt feoffement made to him and to his companion, &c. And ſo they are in by ſeveral titles, that is to ſay, by ſeveral Feoffements, &c.

Fleta lib. 3. cap. 4.

¶ Littleton having ſpoken of Parceners which are only by deſcent, and of Joyntenants which are only by purchaſe, and by Joynt title, ſpeaketh now of Tenants in Common; which may be by three means, viz. by Purchaſe, by Deſcent, or by Preſcription, as hereafter in this Chapter ſhall appear.

¶ On

¶ *Ou pur terme de vie, &c.* Here (&c.) implieth pur terme dauter vie, or for term of years, or for any other fixed Estate in the Land.

And here it appeareth that the essential difference between Joyntenants and Tenants in Common, is, that Joyntenants have the Lands by one joynt Title, and in one Right, and Tenants in common by several Titles, or by one Title, and by several Rights, which is the reason that Joyntenants have one joynt Freehold, and Tenants in Common have several Freeholds, only this property is common to them both, viz. that their occupation is undivided, and neither of them knoweth his part in several. Vide Sect. 296.

The example that Littleton putteth in this Section is perspicuous, and needeth no explication.

Sect. 293.

¶ Et est asçavoir, que quant il est dit en ascun Lieur, qe home est seisie en fee saunz pluis dire, il serra entendue en fee simple, car il ne serra entendue per tiel parol (en fee) que home est seisie en fee taile, sinon que soit mis a ceo tiel addition, fee taile, &c.

AND it is to be understood, that when it is said in any Book, that a man is seised in fee, without more saying, it shall be intended in fee simple, for it shall not be intended by this word (in fee) that a man is seised in fee tail, unless there be added to it this addition, fee tail, &c.

¶ This is evident, and secundum excellentiam, it shall be taken for the highest and best fee, and that is fee simple. Vide devant, Sect. 99.

¶ *Addition en fee tail, &c.* Here is implied a Maxim in Law, viz. that Additio probat minoritatem, as it is vulgarly said, the younger son giveth the difference.

Sect. 294.

¶ Item si 3 Joyntenants sont, si un de eux alien ceo que a luy affiert a un auter home en fee, en cest cas lalienee est tenant en common ouesque les auters deux ioyntenants, mes uncore les auters 2 Joyntenants sont seisies des deux parts ioyntment que remaine, & de ceux deux parts le survivor enter eux deux tient lieu, &c.

ALso if three Joyntenants be, and one of them alien that which to him belongeth to another man in fee. In this case the alienee is Tenant in Common with the other two Joyntenants, but yet the other two Joyntenants are seised of the two parts which remain joyntly, and of these two parts the Survivor between them two holdeth place, &c.

¶ This needeth no explication, only the (&c.) in the end of this Section implieth, that the same Law is where there be more Joyntenants then three.

Sect. 295.

¶ Item ſi ſoient deux Joyntenants en fee, & lun dona ceo que a luy affiert a un auter en le tail, & lauter done ceo que a luy affiert a un auter en le taile, les donees ſont tenants en common, &c.

ALſo if there be two Joyntenants in fee, and the one giveth that to him belongeth to another in tail, and the other giveth that to him belongs to another in tail, the Donees are Tenants in common, &c.

Vide Sect. 390.

¶ The (&c.) in the end of this Section impliеth, that ſo it is when a Leaſe for life, as pur auter vie is made, for in that caſe alſo the Leſſees are Tenants in Common.

Sect. 296.

¶ *Si terres ſoit donees a 2 homes, &c.* Of this ſufficiently hath been ſpoken in the Chapter (a) of Joyntenants.

(a) Sect. 283.

¶ *Mes ſi terres ſont donees a 2 Abbes, &c.* In this caſe of the two Abbots in reſpect of their ſeveral capacities, albeit the words be joint, yet the Law (b) doth adjudge them to be ſeverally ſeiſed.

(b) 7.H.7.9.b. 16.H.7. 15.b.3.H.7.11. 10.E.4. 16.b.5.H.7.25.18.E.27. 49.E.3.25.b. Vide Sect. 200.

The (&c.) in the end of this Section impliеth, that ſo it is if any (c) body Politick or Corporate, be they regular, as deadperſons in law (whereof our author here ſpeaketh) or Secular: as if

¶ Mes ſi terres ſont donees a 2 homes, & a les heires de lour deux corps engendrez, les donees ount joint eſtate pur terme de lour vies, et ſi chescun de eux ad iſſue & deby, lour iſſues tiendront en common, &c. Mes ſi terres ſont donees, a deux Abbes, ſicome al Abbe de Weſtminſter, & al Abbe de S. Alben, a aver & tener a eux & a lour ſucceſſors, & ceſt cas ils ount maintenant al commencement eſtate en common, & nemy joynt eſtate. Et le cauſe eſt, pur ceo q̄ chescun Abbe, ou auter Soveraigne, de meaſon de Religion, devant que il fuit fait Abbe, ou Soveraigne, &c. il fuit forſq̄ come mort perſon en ley, & quant il eſt fait Abbe, il eſt come un home perſonable en ley tantſolemēt a purchaſer & aver terres ou tenements, ou

BUt if lands be given to 2 men, and to the Heirs of their two bodies begotten, the Donees have a joynt Eſtate for term of their lives, and if each of them hath iſſue and die, their iſſues ſhall hold in Common, &c. But if Lands be given to two Abbots, as to the Abbot of *Weſtminſter*, and to the Abbot of Saint *Albans*, to have and to hold to them and to their Succeſſors. In this caſe they have preſently at the beginning an Eſtate in Common, and not a joynt eſtate. And the reaſon is for that every Abbot or other Sovereign of a Houſe of Religion, before that he was made Abbot or Sovereign, &c. was but as a dead perſon in Law, and when he is made Abbot, he is as a man perſonable in Law only to purchaſe and have Lands or Tenements or other things to the uſe of his Houſe, and

(c) 4.H.7.45. 23.E.3. 27.b.

auters

auters choſes al uſe de ſa meaſon, et nemy a ſon proper uſe, come auter ſecular home poit, & pur ceo al commencement de lour purchaſe ils ſont tenants en common, et ſi lun de eux devie, Labbe que ſurveſquiſt naura my tout per le Survivor, mes le ſucceſſor de Labbe que mozuſt tiendra le moitie en common oue Labbe q̄ ſurveſquiſt, &c.

not to his own proper uſe, as another ſecular man may, and therefore at the beginning of their purchaſe they are Tenants in Common, and if one of them die, the Abbot which ſurviveth ſhall not have the whole by ſurvivor, but the Succeſſor of the Abbot which is dead, ſhall hold the moiety in common with the Abbot that ſurviveth, &c.

lands be given to two Biſhops, to have and to hold to them two and their Succeſſors: albeit the Biſhops were never any dead perſons in Law, but always of capacity to take yet ſeeing they take this purchaſe in their politick Capacity, as Biſhops, they are preſently tenants in common, becauſe they are ſeiſed in ſeveral rights, for the one

Biſhop is ſeiſed in the right of his Biſhoprick of the one moiety, and the other is ſeiſed in the right of his Biſhoprick of the other moiety, and ſo by ſeveral titles and in ſeveral capacities, whereas Jointenants ought to have it in one and the ſame right and capacity, and by one and the ſame joynt title. The like Law is if Lands be given to two Parſons and their Succeſſors, or to any other ſuch like Eccleſiaſtical Bodies Politick or Inſorporate, as hath been ſaid.

If a Corody be granted to two men and their heirs, in this caſe becauſe the Corody is incertain, and cannot be ſevered, it ſhall amount to a ſeveral grant, to each of them one Corody, for the perſons be ſeveral, and the corody is perſonal.

Sect. 297.

Item ſi terres ſoient dones a un Abbe, & a un Secular home, a aver & teſta eux & al Abbe, & a ſes ſucceſſors, & al Secular home a luy & a ſes heires, donques ils ount eſtate en comon, Cauſa qua ſupra.

ALſo if Lands be given to an Abbot and a ſecular man to have and to hold to them, *viz.* to the Abbot and his ſucceſſors, and to the ſecular man, to him and to his heirs, they have an Eſtate in common, *Cauſa qua ſupra.*

AND ſo it is if Lands be given to the Parſon of Dale, and to a Lap man, to have and to hold to them, that is to ſay, to the Parſon and his Succeſſors, and to the Lap man and his Heirs, they are preſently Tenants in Common for the cauſes aboveſaid. So of a Biſhop, &c. Et ſic de ſimilibus.

F.N.B.49.I. 16.E 3. Joinder en action 27. 16.Aſſ.p.1.2.R.3.16. 7.H.7.9. 13.H.8.14.

If Lands be given to the King and to a Subject, to have and to hold to them and to their Heirs, yet they are Tenants in Common, and not Jointenants, but in his Royal and Politick Capacity, in jure Coronæ, which cannot ſtand in Jointure with the eſtate of the Subject in his natural Capacity. So likewiſe if there be two Jointenants, and the Crown deſcend to one of them, the Jointure is ſevered, and they are become Tenants in Common. But if Lands be given to A. de B Biſhop of N. and to a ſecular man to have and to hold to them two, and to their heirs. In this caſe they are Jointenants, for each of them take the Lands in their natural capacity.

Pl.Com.in Seig.Barkley's caſe. fol.

If Lands be given to John Biſhop of Norwich, and his Succeſſors, and to John Overal Doctor of Divinity and his Heirs being one and the ſame perſon, he is Tenant in Common, (d) with himſelf. But our Authors rules do not hold in Charters, reals, or perſonals: for if a Leaſe for years be made, or a Ward granted to an Abbot and a Secular man, or to a Biſhop and Secular man, or if goods be granted to them, they are Jointenants, becauſe they take not in their Politick Capacity.

(d) 13.H.8.14. 16.H.7.15.9.H.6.25. 45.E.3.25.

Sect. 298.

CAnd the reaſon is, becauſe they have ſeveral Freeholds and an occupation Pro indiviſo.

Here is to be obſerved that the Habendum doth ſever the premiſes that Prima facie ſeemed to be joynt, for an expreſs eſtate controuls an implied eſtate, as hath been ſaid.

ITem ſi terres ſoient dones a deux a aver, e tener, ſ. lun moitie a lun e a ſes heires, e lauter moity a lauter e a ſes heires, ils ſont tenants en common.

ALſo if Lands be given to two to have and to hold, ſ. the one moity to the one and to his heirs, and the other moity to the other, and to his heirs, they are Tenants in Common.

Sect. 299.

11. Aſſ. Pl. 16.

45. E. 3. 12. 44. Aſſ. 11.

21. E. 4. 22. b.

CAnd the like Law is if the feoffment be made of a third part or a fourth part, &c. And if there be an advowſon appendant, they are alſo Tenants in common of the Advowſon. And albeit it is ſaid that ſuch a feoffment of a moity or third part, &c. is not good without writing, for that (as they ſay) a man cannot create an uncertain eſtate in land by Parol, yet is the Law clear that ſuch a feoffment is good by Parol without writing, and ſuch an uncertain eſtate ſhall paſs by livery, and ſo it appeareth in our Books.

ITem ſi home ſeiſie de certain terres enfeoffa un auter de le moitie de meſm̃ la terre ſans aſcun parlance de aſſignment ou limitation de meſme la moitie ẽ ſeveraltie al temps del feoffment, donqs le feoffee e le feoffor tiendrant lour parts de la terre en common.

ALſo if a man ſeiſed of certain Land infeoffe another of the moity of the ſame Land without any ſpeech of aſſignment or limitation of the ſame moity in ſeverality at the time of the feoffment, then the Feoffee and the Feoffor ſhall hold their parts of the Land in common.

21. I. E. 4. 22 b.
5. E. 3. 23. 67.
Temps E. I. Feoffments
a 15. 34. E. I. quar. imped.
379. 10. Eliz. Dyer 28.
22. E. 3. 6. Feoffments
116. 2. E. 3. 56. 39. E. 3. 38
9. E. 3. 16. 17. E. 3. 3.
18 E. 3 43. 43. E. 3. 26.
23. Aſſ. 8. 33. H. 6. 5 a.

If a Verdict find that a man hath Duas partes manerii, &c. in tres partes diviſas, this ſhall not be intended to be in common, but if Verdict be in tres partes dividendas, then it ſeemeth that they are Tenants in Common by the intendment of the Verdict.

But if a man be ſeiſed of a Mannor whereunto an Advowſon is appendant, and maketh a feoffment of three Acres parcel of the Mannor together with the Advowſon to two, To have and to hold the one moity together with the moity of the Advowſon to the one and his heirs, and the other moity together with the other moity of the Advowſon to the other, and his heirs, this cannot be good without deed, for the feoffor cannot annex the Advowſon to theſe three acres, and diſannex it from the reſt of the Mannor without Deed.

Sect. 300.

CEt eſt aſcavoir, que en meſm̃ le maner come eſt avantdit de tenants en common, de terres ou tenẽts en fee ſimple, ou en fee taile, en meſme le maner poit eſtre

AND it is to be underſtood that in the ſame manner as is aforeſaid of tenants in common of lands or tenements in fee ſimple, or in fee tail, in the ſame

de tenants a terme de vie. Si-coñ deux ioyntenants ſont en fee, & lun leſſa a un home ceo que a luy affiert pur terme de vie, & lauter ioyntenant leſſa ceo que a luy affiert a un auter pur terme de vie, &c. les deux leſſees ſont tenants en common pur toute vies, &c.

manner may it be of Tenants for term of Life. As if two Joyntenants be in fee, and the one letteth to one man that which to him belongeth for term of Life, and the other Joyntenant letteth that which to him belongeth to another for term of life, &c. the ſaid two Leſſees are Tenants in Common for their lives, &c.

Vide Sect. 295. where this is ſufficiently explained before.

Sect. 301.

¶ Item ſi hoñ leſſa terres a deux homes pur terme de lour vies, et lun granta tout ſon eſtate de ceo que a luy affiert a un auter, donq; lauter tenant a terme de vie, & celuy a q̃ le grant eſt fait ſont tenants en common, durant le temps que ambideux les leſſees ſont en vie.

Alſo if a man let Lands to two men for term of their lives, and the one grants all his eſtate of that which belongeth to him to another, then the other Tenant for term of life, and he to whom the grant is made are Tenants in Common during the time that both the Leſſees be alive.

¶ Et memorandum, que en touts autres tiels caſes, coment que ne ſont icy expreſſement moves ou ſpecifies, ſi ſont en ſemblable reaſon, ſont en ſemblable ley.

¶ And *memorandum*, that in all other ſuch like caſes, although it be not here expreſſly moved or ſpecified, if they be in like reaſon, they are in the like Law.

¶ AND ſo it is if Lands be letten to two for term of their lives, Et eorum alterius diutius viventi, and one of them granteth his part to a ſtranger, whereby the joynture is ſevered, and diſth; here ſhall be no ſurvivor, but the Leſſor ſhall enter into the moity, and the ſurvivor ſhall have no advantage of theſe words, Et eorum alterius diutius viventi, for two cauſes. Firſt, for that the joynture is ſevered. Secondly, for that thoſe words are no more then the Common Law would have implied without them, and Expreſſio eorum quæ tacite inſunt nihil operatur. * Hereby it appeareth that in caſe of Leaſes for life it is more beneficial for the Leſſor to have the Joynture ſevered then to have it continue. 30. Aſſ. 18.

¶ *Si ſoient en ſemblable reaſõ ſont en ſemblable ley.* Here Littleton citeth one of the Maximes of the Common Law, That wheresoever there is the like reaſon, there is the like Law. Ubi eadem ratio, ibi idem jus, or Ubi eadem ratio, ibi idem jus eſſe debet, for Ratio eſt anima legis. And therefore Ratio poteſt allegari deficiente lege. But it muſt be Ratio vera & legalis & non apparens. And here it appeareth that Argumentum à ſimili is good in Law. Sed ſimilitudo legalis eſt caſuum diverſorum inter ſe collatorum ſimilis ratio, quod in uno ſimilium valet, valebit in altero, diſſimilium diſſimilis eſt ratio. Vide Sect. 1.

Sect. 302.

¶ *SI deux Joyntenants en fee, &c.*

This needeth no explanation.

¶ *Et sur ceo case un question poit surder, &c.*

Vide 33.H 6.4.b.

Here Littleton maketh a question, and sheweth the reasons on both sides, and concludes with a Quære. When Littleton maketh a question, and sheweth the reason on both sides, the latter is ever his own, (a) and the better. But time hath made this question without question, for now all agree, that the joynture is severed for the time, according to the latter opinion here set down in Littleton, whose reasons are unanswerable: for many times the change of the freehold makes an alteration or change of the reversion. As if tenant in tail, or the husband seised in the right of his wife, or tenant for life make a lease for life of the lessee, in every of these cases the lessor doth gain a new reversion by wrong, as shall be said more at large in the Chapter of Discontinuance, and if the elder Brother grant the reversion (expectant upon a Freehold) for life, it shall cause possessio fratris, as hath been said.

(a) Vide Sect. 340. 375. 439. 440. 462. 463. 464. 482. 483. 648. 720. 729. Vide Sect. 170.

Vide Sect. 8. 7 H. 5.

¶ *Per mesme le reason le reversion que est dependant sur mesme le franktenemẽt est sever de le Joynture, &c.*

7 H. 7. 9.

If two Joyntenants in fee be, and they both joyn in a Lease to an Abbot and a secular man for term of their lives, here the reversion that is dependant upon several freeholds is severed. And so it is if they joyn in a lease to two secular men, to have and to hold the one moity to the

¶ Item si deux Joyntenants en fee sont, et lun lessa ceo que a luy affiert a un auꝰ pur terme de sa vie, le Tenant a terme de vie durãt sa vie, et lauꝰ Joyntenant que ne lessa pas, sont Tenants en cõmon. Et sur ceo case un question poit surder sicome en tiel case, mittomus que l'lessor ad issue & obvie, vivant lauter Joyntenant son companion, et vivant l'tenãt a terme de vie, l'question poit estre tiel: Si le reversion de la moitie que le lessor avoit dis cẽdra al issue le lessor, ou que lauꝰ ioyntenant avera cel reversion per le survivor. Actus ont dit en cest case, que lauꝰ ioyntenant avera cel reversiõ per le survivor, & lour reason est tiel. ẽ. que quant les ioyntenants fueront ioyntment seisies en fee simple, &c. coment que lun de eux fit estate de ceo que a luy affiert pur terme de sa vie, et coment q̃ il ad sever le frãktenemẽt de ceo que a luy

ALso if there be two Joyntenants in fee, and the one letteth that to him belongeth to another for term of his life, the Tenant for term of life during his life, and the other Joyntenant which did not let, are Tenants in Common. And upon this case a question may arise, as in such case admit that the Lessor hath issue and die, living the other Joyntenant his companion, and living the Tenant for life, the question may be this, Whether the Reversion of the moiety which the Lessor hath shall descend to the issue of the Lessor, or that the other Joyntenant shall have his Reversion by the Survivor. Some have said in this case that the other Joyntenant shall have this Reversion by the Survivor: and their reason is this, *viz.* That when the Joyntenants were joyntly seised in fee simple, &c. although that the one of them make an Estate of that to him belongeth for term of his life, and although that he hath severed the

affi ert

affiert per l' leafe, uncore il nad fever l' fee ſimple, mes le fee ſimple demurt a eux ioyntment cõe il fuit adevant. Et iſſint ſemble a eux, que lauter Joyntenant que ſurveſquiſt, avera le reverſion per l' ſurvivour, &c. Et auters ont dit le contrarie, & ceo eſt lour reaſon, ſ, que quaunt lun des Joyntenants leſſa ceo que a luy affiert a un auter pur terme de ſa vie, per tiel Leaſe le Franktenemẽt eſt ſever dle ioynture. Et per meſme le reaſon le Reverſion que eſt dependant ſur meſme le Franktenement, eſt ſever de le Joynture. Aury ſi le Leſſour uſt reſerve a luy un annual Rent ſur le Leas, le Leſſor ſolement averoit le Rent, &c. le q̃l eſt un proofe q̃ le reverſiõ eſt ſolement en luy, & que lauter nad riens en cel reverſion, &c. Aury ſi le tenant a terme de vie fuit impleade, &c. & fiſt default apres default, donques le Leſſor ſerroit de ceo ſolemẽt receive a defender ſon droit, & ſon Compagnion en

freehold of this which to him belongs by the Leaſe, yet he hath not ſever'd the Fee ſimple, but the Fee ſimple remains to them joyntly as it was before. And ſo it ſeemeth to them, that the other Joyntenant which ſurviveth ſhall have the reverſion by the ſurvivor, &c. And others have ſaid the contrary, and this is their reaſon, s. that when one of the Joyntenants leaſeth that to him belongeth, to another for term of his life, by ſuch Leaſe the freehold is ſevered from the Joynture. And by the ſame reaſon the reverſion which is depending upon the ſame freehold is ſevered from the Joynture. Alſo if the Leſſor had reſerv'd to him an annual Rent upon the Leaſe, the Leſſor only ſhould have had the Rent, &c. the which is a proof, that the reverſion is only in him, and that the other hath nothing in the reverſion, &c. Alſo if the Tenant for term of life were impleaded, and maketh default after default, the Leſſor ſhall be only receiv'd for this, to defend his right and his Com-

one for life; and the other moity to the other for life, for both theſe caſes are warranted by the authority of Littleton.

If two Joyntenants be of a leaſe for twenty one years, and the one of them letteth his part for certain years, part of the term, the Joynture is ſevered, and ſurvivor holdeth not plate; for a term for a ſmall number of years is as high an intereſt, as for many more years, and ſo was it reſolved Hil. 18. El. Reginæ, in communi Banco, * which I my ſelf heard. * Hill. 18 E. 2.

If two Coparceners be in fee, and the one make a Leaſe for life, this is no ſeverance of the Coparcenary, for notwithſtanding the Lord ſhall make one avowry upon them both.

But if two Joyntenants be, and one maketh a leaſe for life, this is a ſeverance of the joynture, as Littleton here taketh it, and ſeveral avowries ſhall be made upon them.

¶ *Auxy ſi le Leſſor uſt reſerve un annual rent, le leſſor ſolement avera le rent, &c.* But if two Joyntenants make a leaſe for life, reſerving a rent to one of them, the rent ſhall enure to them both, becauſe the reverſion remains in joynture, unleſs the reſervation be by deed indented, and then he only to whom it is reſerved ſhall have it. But if they make a leaſe by deed indented, reſerving or ſaving the reverſion to one of them, that is void, becauſe they had the reverſion before, but the rent is newly created. 5. E. 4 4. 2. 27. H. 8. 16. 2. 7. E. 4. 25. 14. E. 3. Br. 283

And ſo it is if ſuch a Leſſee for life ſhould ſurrender to one of them, it ſhall enure to them both, for that they have a joynt reverſion. But if the Leſſee grant his eſtate to one of them, no part of it ſhall enure to his companion, 5 E. 4. 4.

panion, because for the moity belonging to his companion, it is in esse in him to whom the grant is made, the reversion to the other in fee.

38.H.6.24.b.2.R.3.tit. Extinguishment 3.

If two Joyntenants make a lease for life, the remainder to his companion in fee, this is a good remainder of his moity to his companion.

¶ *Donques le feoffor serra de ceo solement receive, &c.*

¶ *Receive*, Receit, Receptio, is in many cases, where a person, party to a writ, or an estranger thereunto, to whom a reversion or remainder appertaineth, shall in default of another person be received to defend his or her Freehold or Inheritance, the Law saith, Admittatur, &c: And this admission or receipt is given by sundry statutes, (f) (and this is that which the Civilians call, Admissio tertiæ personæ pro interesse.) Et in casibus prædictis duæ concurrunt Actiones: Una inter petentem & tenentem, & alia inter tenentem, jus suum ostendentem & petentem.

(f) W.2.c.3. 20.E.1. Statute de defensione Juris. 13.R.2.c.16.

¶ *Pur ceo que un Franktenement ne poit per nature de Joynture, estre annexe a un reversion.* And this is the principal reason, and of this sufficient hath been said in the Chapter of Joyntenants, Sect. 291.

¶ *&c.* This &c. in the end of this Section, implieth any other heir lineal or collateral.

ceſt caſe en nul manner ſerroit receivé, le quel prove le reversion del moity deſtre tantſolement en le Leſſor: Et ſic per conſequens, ſi le Leſſour morust vivant le leſſee pur terme de vie, l'reversion diſcendra al heire de Leſſour, & nemy deviendra a lauter Joyntenant per le ſurvivor, Ideo quære. Mes en ceſt caſe ſi celuy Joyntenant que ad l'franktenement ad iſſue & devie, vivant le leſſor & leſſee, donques il ſemble, que meſme iſſue aũa ceſt moitie en demeſne, & en fee per diſcent, pur ceo que un Franktenement ne poit per nature de Joynture eſtre annexe a un reverſion, &c. & il eſt certaine, que celuy que leſſa fuit ſeiſie de le moitie en ſon demeſne come de fee, & nul avera aſcun jointure en ſon Franktenement; Ergo ceo diſcendra a ſon iſſue, &c. Sed quære.

panion in this caſe in no manner ſhall be received, the which proveth the reverſion of the moity to be only in the leſſor: and ſo by conſequent if the leſſor dieth, living the Leſſee for term of life, the reverſion ſhall deſcend to the heir of the Leſſor, and ſhall not come to the other Joyntenant by the ſurvivor, *Ideo quære.* But in this caſe if that joyntenant which hath the freehold hath iſſue, and dies living the Leſſor and the Leſſee, then it ſeemeth that the ſame Iſſue ſhall have this moity in demeſne, and in fee by deſcent, for that a freehold cannot by nature of Joynture be annexed to a Reverſion, &c. And it is certain, that he which leaſed was ſeiſed of the moity in his Demeſne as of Fee, and none ſhall haye any Joynture in his Freehold, therefore this ſhall deſcend to his Iſſue, &c. *Sed quære.*

Sect.

Sect. 303.

¶ Mes ſi iſſint ſoit q̄ la ley en ceſt cas eſt tiel, que ſi le leſſor devie vivant le leſſee, & vivant lauter ioyntenant, que ad le franktenement de lauter moitie, que le reverſion diſcendra al iſſue del leſſor, donque eſt le ioynture, & title que aſcun de eux poit aver per le ſurviver, & le droit de le ioynture anient, & tout ouſterment defeat a touts iours. En meſme le maner eſt, ſi celuy ioyntenant que ad le franktenement devie, vivant le leſſor & le leſſee, ſil a ley ſoit tiel que ſon franktenement & fee q̄ il ad en le moitie, diſcendra a ſon iſſue, donques le ioynture ſerra defeat a touts iours.

But if it be ſo that the Law in this caſe be ſuch, that if the Leſſor die living the Leſſee, and living the other joyntenant which hath the freehold of the other moity, that the Reverſion ſhall deſcend to the Iſſue of the Leſſor, then is the Joynture and title which any of them may have by the Survivor, and the right of the Joynture taken away, and altogether defeated for ever. In the ſame manner it is if that Joyntenant which hath the freehold die living the Leſſor and the leſſee, if the Law be ſo as his freehold and fee which he hath in the moity ſhall deſcend to his Iſſue, then the Joynture ſhall be defeated for ever.

¶ *Donque eſt le jointure & title, &c. & le droit de le joynture anient, &c.*

And the reaſon of this is, for if the Joynture be ſevered at the time of the death of him that firſt deceaſed the benefit of Surviver is utterly deſtroyed for ever, as hath been ſaid (*) afore in the Chapter of Joyntenants. But in the caſe aforeſaid, if tenant for life dieth, in the life of both the Joyntenants, they are joyntenants again as they were before. (*) Vide Sect. 291.

If two Joyntenants be in fee, and the one letteth his part to another for the life of the leſſor & the leſſor dieth, ſome ſay that his part ſhal ſurvive to his companion, for by his death the Leaſe was determined. And others hold the contrary, and their reaſon is, firſt, for that at the time of his death the Joynture was ſevered, for ſo long as he lived the leaſe continued. And ſecondly, that notwithſtanding the act of any one of the Joyntenants there muſt be equal benefit of Surviver as to the freehold. But here if the other Joyntenant had firſt died, there had been no benefit of Surviver to the Leſſor without queſtion.

Sect. 304.

¶ Item ſi 3 ioyntenants ſont, & lun releſſa p ſon fait a un d̄ ſes cōpanions tout le droit que il avoit en le terre, donques ad celuy a que le releas eſt fait le tierc̄ part de leg ter-

And if three Joyntenants be, and the one releaſe by his deed to one of his companions all the right which he hath in the Land, then hath he to whom the releaſe is made the third part of

¶ Upon this caſe theſe two things are to be obſerved. Firſt, that in this caſe this releaſe doth enure by way of mitter leſtate, and not (*) by way of Extinguiſhment, for then the Releaſe ſhould enure to his Companion alſo, and he is in the Per by him that maketh the Releaſe. (a) But if he had releaſed to the other two, then had it wrought no degree but (*) 9. Eliz. Dyer 263. 19. H. 6. 17.
(a) 40. E. 3. 41. 13. E. 3. tit. Garr. 35. E. 3. releaſe 43. 22. H. 6. 42. 14. E. 3. Brieve 28. 19. H. 6. 17. 33. H. 6. 5. 28. H. 6. 2. 37. H. 8. Alienation 31. 8. H. 4. 8. 10. E. 4. 8.

but in ſuppoſition of Law, for many purpoſes they to whom the Releaſe is made (as hath been ſaid) ſhall be ſuppoſed in from the firſt feoffor, as they ſhall deraign the firſt warranty for the whole.

(b) 9.Eliz.Dyer 263. 29.H.6.17.

(b) The ſecond thing to be obſerved is, that he to whom the releaſe is made hath a fee ſimple without theſe words (heires) as hath been touched in the firſt Chapter of the firſt Book, for that he to whom the releaſe is, is ſeiſed per my, & per tout, of the fee and inheritance as hath been ſaid in the Chapter of Joyntenants.

Et quant al tierce part, que il ad per force de releas, il tient cel tierce part ove luy meſme et ſon companion en common.

the Lands by force of the ſaid releaſe, and he and his companion ſhall hold the other two parts in Joynture. And as to the third part which he hath by force of the releaſe, he holdeth that third part with himſelf and his companion in common.

And note the like law is between Coparceners: and further if there be two Coparceners, and the one hath iſſue twenty daughters and dieth, the other may releaſe to any one of the daughters her whole part, albeit ſhe to whom the releaſe is, hath not an equal part, but for the priority, and the undiuided eſtate the releaſe is good.

But if two Joyntenants be of twenty Acres, and the one maketh a feoffment of his part in eighteen Acres, the other cannot releaſe his entire part, but only in two Acres, for that the Joynture is ſeuered for the reſidue.

Sect. 305.

(c) 10.Eliz.Bendloes 9.Eliz.Dier 263.

See more of this in the Chapter of Releaſes.

10.E.4.3.b.21.H.6.3.b.

THis is euident upon that which hath been ſaid before. (c) And it is to be underſtood that a Releaſe may enure four manner of ways, firſt by way of mitter leſtate as here it appeareth. Secondly, by way of mitter le droit. Thirdly, by way of Extinguiſhment. Fourthly, by way of creation or inlargement of an Eſtate, as hereafter in this Chapter ſhall appear. And it is to be obſerued that upon a releaſe that creates or inlargeth an Eſtate, or enures by way of mitter leſtate, a Rent may be reſerued, but not upon a releaſe that enureth by way of mitter le droit, or which enures by way of extinguiſhment.

The (&c.) in the end of this Section implieth a diuerſity

ET eſt aſcauoir, q̃ aſcun foits un releas prendra effect, & urera pur mitter leſtate de celuy que fiſt le releas, a celuy a que le releas eſt fait, ſicome en le cas auantdit, & auxy ſicome ioynt eſtate ſoit fait a le baron & ſa feme, & a la tierce perſon, & la tierce perſon releſſa tout ſon droit que il ad a le baron, adonque ad le baron la moitie que le tierce avoit, & la feme de ceo nad riens. Et ſi en tiel caſe le tierce releſſa a la feme nient noſmant le baron en le releas, donques ad la feme le moitie que le tierce avoit, &c. & le barõ nad riens de ceo forſq;

AND it is to be obſerved that ſometimes a deed of releaſe ſhall take effect, & enure to put the eſtate of him which makes the releaſe to him to whom the Releaſe is made, as in the caſe aforeſaid, and alſo, as if a joynt eſtate be made to the husband and wife, and to a third perſon, and the third perſon releaſe all his right which he hath to the husband, then hath the husband the moiety which the third had, and the wife hath nothing of this. And if in ſuch caſe the third Releaſe to the Wife not naming the Husband in the Releaſe, then hath the wife the moiety which the

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en droit sa feme, pur ceo que en tiel case le release urera de faire estate a celuy a que le release est fait, de tout ceo que affert a celuy que fait le release, &c.

that which belongeth to releasé, &c.

third had, &c. And the husband hath nothing of this but in right of his wife, because that in this case the releasé shall enure to make an estate to whom the releasé is made of all him which maketh the

between a releasé which enures by way of mitter lestate (whereof Littleton here speaketh) and a Releasé that enures by way of extinguishment: for of a releasé enuring by way of extinguishment made to the husband, the wife shall take benefit, or to the Wife, the Husband shall take benefit, as hereafter shall more at large be said.

Sect. 306.

¶ Et ẽ ascun cas un releas urera de mitter tout le droit q̃il q̃ fait le releas ad a celuy a q̃ le release est fait. Si come home seisie de certain tenements est disseisie per deux disseisors, si le disseisee p̃ son fait releasa tout son droit, &c. a un des disseisors, donque celuy a que le releas est fait avera & tiendra touts les tenements a luy solement, & oustera son companion de chescun occupation de ceo. Et le cause est, pur ceo q̃ les deux disseisors fueront eins encounter la ley, & quãt un de eux happe le releas de celuy que ad droit dentre, &c. cest droit en tiel cas vestera en celuy a que le releas est fait, & est en tiel plyte, sicome il que avoit droit avoit

And in some case a releasé shal enure to put all the right which he who maketh the releasé hath, to him to whom the releasé is made. As if a man seised of certain tenements is disseised by two disseisors, if the disseisee by his deed releasé all his right, &c. to one of the disseisors, then he to whom the releasé is made shall have and hold all the tenements to him alone, and shall oust his companion of every occupation of this. And the reason is, for that the two disseisors were in against the Law, and when one of them happeth the releasé of him which hath right of entry, &c. this right in such case shall vest in him to whom the releasé is made, and he is in like plite, as he which

¶ Here Littleton pursueth the second part of his division, viz. where a releasé shall enure by way of Mitter le droit.

¶ *Disseisie per deux disseisors, &c.* The like law is, where there be two joynt Abators or Intruders which come in meerly by wrong. But if two men do usurp by a wrongful presentation to a Church, and their Clerk is admitted, instituted and inducted, and the rightful Patron releaseth to one of them, this shall enure to them both, for that the usurpers come not in meerly by wrong, but their Clerk is in by admission, and institution, which are judicial acts. (f) And therefore an usurpation shall work a Remitter to one that hath a former right.

(f) Fitz. N. B. 35, in 11. R. 2. quare Imp. 144.

¶ *Donques celuy a que le releasé est fait avera & teigner a touts les tenements, &c.* Here by operation of Law presently upon the delivery of the releasé the whole freehold and inheritance is vested in him to whom the releasé is made, and al the state, that the other Disseisor had wholly desested: for right and wrong cannot consist together, but the wrongful estate giveth place to the rightful. And the reason hereof is for that as hath been said, the disseisor to whom the releasé

was made was ſeiſed Per my & per tout, whereunto when the right cometh it excludeth the wrong (e) for right which is lawful, and wrong that is contrary to Law cannot ſtand together.

(e) Brit. fo. 116. 26. Aſſ. pl. 39. 39. E. 3. 29. 21. H. 6. 41. 22. H. 6. 22. 7. E. 4. 25. 9. E. 4. 6. 11. H. 7. 12. 20 H. 7. 5. 21. H. 7. 18. 12. E. 4. tit. Diſcontin. 1. 9. H. 6. 37. 21. H. 6. 52.

¶ *En tiel plite ſicome il que avoit droit, avoit entrer & luy enfeoffe, &c*

enter & luy enfeoffa, &c. Et la cauſe eſt, pur ceo que il q̄ avoit adevant eſtate per tout, ſ. p diſſeiſin, &c. ad ore per le releas un eſtate droiturel.

hath the right had entred and enfeoffed him, &c. And the reaſon is, for that he which before had an Eſtate by wrong, s. diſſeiſin, &c. hath now by the releaſe a rightful eſtate.

This (&c.) doth imply that this is true ſecundum quid, but not ſimpliciter, for as to the holding out of the joynt diſſeiſor it amounts as much as if he had entred and enfeoffed him to whom the releaſe is made, but it doth not amount to an entry and feoffment ſimpliciter to all purpoſes, as ſhall be ſaid hereafter in his proper place in the Chapter of Releaſes.

Sect. 307.

¶ Here Littleton ſpeaketh of the third kind of releaſes. And the reaſon of this diverſity (implied in the (&c.) in the end of this Section) between the diſſeiſors and their feoffees, is for that the feoffees coming in by title and purchaſe, are intended in Law to have a Warranty (which is much eſteemed in Law) and therefore leſt the Warranty ſhould be avoided, the releaſe ſhall enure to both the Feoffees in favour of Purchaſors, and ſo the right and benefit of every one ſaved.

(f) 20. H. 3. Aſſ. 432. 1. Aſſ. 13. 9. Aſſ. 15. 21. Aſſ. 28. 27. Aſſ. 68. 32. 29. Aſſ. 54. 43. Aſſ. 17. 40. E. 3. 24. 50. E. 3. 21. 3. R. 2. entry cong. 38. 13. E. 3. tit. Aſſ. 9. 22. Aſſ. 20.

(f) And in ancient time if the Diſſeiſor had made a Feoffment in fee, or a gift in tail, or a leaſe for life, and the Feoffee, Donee, or Leſſee had continued in ſeiſin quietly a year and a day, the entry of the diſſeiſee had not been lawful upon him, and the reaſon was for the benefit and ſafeguard of the Warranty (which was intended by Law) ſhould have been deſtroyed by the entry. But hereof alſo more ſhall be ſaid in his proper place in the Chapter of Releaſes.

¶ **En cel caſ un releas urera per voy dextinguiſhment, & en tiel caſe tiel releas ayderа la ioyntenāt a que le releas ne fuit fait, aurybien come luy a q̄ le releaſe fuit fait. Sicome un home ſoit diſſeiſie, & le diſſeiſor fait feoffment a deux homes en fee, ſi le diſſeiſee releſſa per ſon fait a un de les feoffees, donques cel releaſe urer̄ a ambideux les feoffees, pur ceo q̄ les feoffees ont eſtate per la ley, ſ. per feoffment, & nemy per tort fait a nulluy, &c.**

And in ſome caſe a releaſe ſhall inure by way of extinguiſhment, & in ſuch caſe ſuch releaſe ſhall aid the joyntenant to whom the releaſe was not made as well as him to whom the releaſe was made. As if a man be diſſeiſed and the diſſeiſor makes a feoffment to two men in fee, if the diſſeiſee releaſe by his deed to one of the feoffees, this releaſe ſhall inure to both the feoffees, for that the feoffees have an eſtate by the law, s. by feoffment, and not by wrong done to any, &c.

Sect. 308.

¶ En meſme le maner eſt, ſi le diſſeiſor fait un leaſe a un hoe pur term de ſa vie, le remain-

IN the ſame manner it is, if the diſſeiſor maketh a Leaſe to a man for term of his life, the re-

der

der ouſter a un auter en fee, ſi le diſſeiſee releſſa a le tenant a terme de vie tout ſõ droit, &c. cel releaſe urera auxibien a celuy en le remainder come a le tenant a terme de vie. Et la cauſe eſt, pur ceo que le tenant a terme de vie vient a ſon eſtate per courſe de ley, & pur ceo cel releaſe urera, & p̄zent effect per voy dextinguiſhment de droit de celuy que releſſa, &c. Et per cel releaſe le tenant a terme de vie nad pluis ample ne greinder eſtate, que il avoit devant le releaſe fait a luy, & le droit celuy que releſſa eſt tout ouſterment extinct. Et entant que ceſt releaſe ne poit enlarge leſtate de le tenant a terme de vie, le eſt reaſon que cel releaſe urera a celuy en le remainder, &c.

¶ Pluis ſerra dit de Releaſes en le Chapiter de Releaſes.

mainder over to another in fee, if the diſſeiſee releaſe to the tenant for term of life all his right, &c. this releaſe ſhall inure as well to him in the remainder, as to the tenant for term of life. And the reaſon is for that the tenant for life cometh to his Eſtate by courſe of law, and therefore this releaſe ſhall enure and take effect by way of extinguiſhment of the right of him which releaſeth, &c. And by this releaſe the tenant for life hath no ampler nor greater eſtate then he had before the releaſe made him, and the right of him which releaſeth is altogether extinct. And inaſmuch as this releaſe cannot enlarge the eſtate of the tenant for life, it is reaſon that this releaſe ſhall inure to him in the remainder, &c.

More ſhall be ſaid of Releaſes in the Chapter of Releaſes.

¶ *Ceſt releaſe urera auxibien a celuy en le remainder, come a le tenant a terme de vie, &c.* Of this and the reſt of this Section, for avoiding of repetition, more ſhall be ſaid in his proper place in the Chapter of Releaſes.

¶ *Tout ſon droit, &c.* Here by this (&c.) is implied, title, demand, and other words which may transfer the right, &c. Alſo here is implied of in or to the land.

Sect. 309.

¶ Item ſi ſoient deux Parceners & lun alien ceo que a luy affiert a un auter, donques lauter parceñ & alienee ſont Tenants en Common.

Alſo if two Parceners be, and the one alieneth that to her belongeth, to another, then the other Parcener and the Alienee are Tenants in Common.

This is evident and needeth no explication.

Sect. 310.

¶ Item nota que Tenants en Common poient eſtre per titl' de Preſcription, ſicome lun & ſes Anceſtors, ou ceux que eſtate il

Alſo note that Tenants in Common may be by title of Preſcription, as if the one and his Anceſtors, or they whoſe e-

ad en un moity ent tenus ẽ common meſme le moitie, ove lauter tenant que ad lauter moitie & ove ſes auncestors ou ove ceux que eſtate il ad Pro indiviſo, de temps dont memory ne curt, &c. Et divers autres manners poient faire & cauſer homes deſtre Tenants en Common, que ne ſont icy expreſſes, &c.

ſtate he hath in one moiety have holden in common the ſame moiety with the other Tenant which hath the other moiety, & with his Anceſtors, or with thoſe whoſe ſtate he hath undivided, time out of mind of man. And divers other manners may make and cauſe men to be Tenants in Common, which are not here expreſt, &c.

11.E.3.Tranſ.217.13.E.3.Briefe 674. 8.H.6. 16.b.Lib.Intrat.23.

OF this, beſides Littleton, there is good authority in Law, as there is for all his other caſes throughout his three Books, but Joyntenants cannot be by preſcription, becauſe there is ſurvivor between them, but not between Tenants in Common.

The two (&c.) in this Section are evident.

Sect. 311.

IN this Section we learn two things: Firſt, that in real Actions, and in Actions alſo that are mixt with the perſonalty, Tenants in Common ſhall ſever in Action, becauſe they have ſeveral freeholds, and claim in by ſeveral titles, and therefore as they ſhall be ſeverally by others impleaded, ſo ſhall they ſeverally implead others in all real and mixt actions, unleſs it be in caſe of neceſſity for a thing entire, as hereafter in this Chapter ſhall appear. And Littleton here putteth the caſe of the Aſſiſe which is mixt with the perſonalty, and therefore he needed not to put any caſe of any Precipe quod reddat, for if it be ſo in caſe of Aſſiſe à fortiori, in Writs of higher nature, which is neceſſarily implied in the (&c.) Now of ſuits that ſound in the realty, and of perſonal actions Littleton ſpeaketh hereafter in this Chapter.

4.E.4. 18.b.

ITem en aſcun cas Tenants en common poyent aver de lour poſſeſſion ſeverall Actions, & en aſcun cas ils joyntdroit en un Action. Car ſi ſont deux Tenants en common, & ils ſont diſſeiſes, ils poyent aver deux Aſſiſes, & nemy un Aſſiſe, car chaſcun de eux cobient aver un Aſſiſe de ſõ moitie, &c. Et la cauſe eſt, pur ceo que tenants en common fueront ſeiſies, &c. per ſeverall titles. Mes autrement eſt de Joyntenants, car ſi ſoyent vint Joyntenants, & ils ſont diſſeiſies, ils averont ẽ touts lour noſmes forſque un Aſſiſe, pur ceo que ils nont forſque un joynt title.

ALſo in ſome caſe tenants in Common ought to have of their poſſeſſion ſeveral Actions, and in ſome caſes they ſhall joyn in one Action. For if two Tenants in Common be, and they be diſſeiſed, they muſt have two Aſſiſes, and not one Aſſiſe, for each of them ought to have one Aſſiſe of his moiety, &c. and the reaſon is, for that the Tenants in Common were ſeiſed, &c. by ſeveral Titles. But otherwiſe it is of Joyntenants, for if twenty Joyntenants be, and they be diſſeiſed, they ſhall have in all their names but one Aſſiſe, becauſe they have not but one joynt title.

The ſecond thing here to be learned, is the diverſity between Tenants in Common, and Joyntenants, which both of it ſelf, and upon that which hath been ſaid, is apparent.

Sect.

Sect. 312.

¶ Item ſi ſoient trois Joyntenants, & un releaſe a un de ſes companions tout l' droit que il ad, &c. & puis les auters deux ſont diſſeiſies de lentiertie, &c. en ceſt caſe les deux auters averont ſeveralx Aſſiſes, &c. en ceſt fozme, ſ ils averont en lour ambideux noſmes, un Aſſiſe de les deux parts, &c. pur ceo que les deux parts ils teignont iointment al temps de le diſſeiſin. Et quant a le tierce part, celuy a que le releaſe fuit fait, covient aver de ceo un Aſſiſe en ſon noſme demeſne, pur ceo que il (quaunt a meſme le tierce part) eſt de ceo Tenant in Common, &c. pur ceo que il vient a cel tierce part per force del Releaſe, & nemy tant ſolement per force del iointure.

ALſo if three Joyntenants be, and one releaſe to one of his fellows all the right which he hath, &c. and after the other two be diſſeiſed of the whole, &c. In this caſe the two others ſhall have ſeveral Aſſiſes, &c. in this manner, s. They ſhall have in both their names an Aſſiſe of the two parts, &c. becauſe the two parts they held joyntly at the time of the diſſeiſin. And as to the third part, he to whom the releaſe was made, ought to have of that an aſſiſe in his own name, for that he (as to the ſame third part) is thereof Tenant in Common, &c. becauſe he cometh to this third part by force of the Releaſe, and not only by force of the Joynture.

¶ This is put for an example (which ever doth illuſtrate the Rule) and is evident of it ſelf: and the (&c) in this Section needeth no further application.

Sect. 313.

¶ Item quant a ſuer des Actions que touchant l' realtie, y ſont diverſities perenter parceners que ſont eins per divers diſcents, & Tenaunts en common. Car ſi home ſeiſie de certain terre en fee ad iſſue deux files & mozuſt, & les files entront, &c. & cheſcun de eux ad iſſue un fits, et devieront ſauns partition fait enter eux, per que lun moity diſcendiſt a le fits dun parcener, & lauter moitie diſcendiſt al fits dauter parcener, & ils entront

ALſo to the ſuing of Actions which touch the realty, there be diverſities between Parceners which are in by divers deſcents, and Tenants in Common: For if a man ſeiſed of certain Land in Fee, hath iſſue two Daughters and dieth, and the Daughters enter, &c. and each of them hath iſſue a Son, and die without partition made between them, by which the one moiety deſcends to the Son of the one Parcener, and the other moiety deſcends to the

entront & occupiont en common et sont disseisies, en ceſt case ils averont en lour deux noſmes un Assise & nemy deux Assises. Et la cause est, que coment que ils veignont eins per divers discents, &c. uncore ils sont Parceners & briefe de Partitione facienda gist enter eux. Et ils ne sont parceners eyant regard ou respect tant solement a le seisin & possession de lour meres, mes ils sont Parceners pluis eyant respect a lestate que discendist a lour ayel a laur meres, car ils ne poyent estre Parceners si lour meres ne fueront Parceners a-devant, &c. Et illint a tiel respect & consideration, s. quant a le primer discent que fuit a lour meres ils ont un title en parcenarie, le quel fait eux parceners. Et auxy ils ne sont forsque come un heire a lour common Auncestor, s. a lour ayel de que la terre discendist a lour meres. Et pur ceux causes devant partitiō enter eux, &c. ils averont un Assise coment que ils veignont eins p̄ severalx discents.

Son of the other Parcener, and they enter and occupy in common and be disseised, in this case they shall have in their two names one Assise, and not two Assises. And the cause is, for that albeit they come in by divers descents, &c. yet they are Parceners, and a Writ of Partition lieth between them. And they are not Parceners, having regard or respect only to the Seisin and Possession of their Mothers, but they are Parceners rather, having respect to the estate which descended from their Grandfather to their Mothers, for they cannot be Parceners if their Mothers were not Parceners before, &c. And so in this respect and consideration, s. as to the first descent which was to their mothers, they have a title in Parcenary, the which makes them Parceners. And also they are but as one heir to their common Ancestor, s. to their grandfather, from whom the Land descended to their Mothers. And for these causes before partition between them, &c. they shall have an Assise, although they come in by several descents.

Vide Sect. 241.

¶ This, upon that which hath been said in * the Chapter of Parceners, is evident: where you may read excellent points of learning, and diverse titles concerning this matter, all which are here either expressed or implied, as the studious and diligent Reader will observe.

Sect. 314.

¶ *En ceſt case quant a le Rent & liver de Pepper, ils averont deux Assises & quaunt a lesperuer ou le Chival forsque un Assise.*

But for the better understanding hereof it is to be known, That if two Te-

¶ Item si sont deux Tenants en Common de certain terre en fee, & ils doneront cel terre a un home en le taile, ou lesseront a un home pur terme

ALso if there be two Tenants in Common, of certain Lands in Fee, and they give this Land to a man in Tail, or let it to one for term of Life, ren-

De

de vie, rendant a eux annuelment un certaine rent, & un liver de Pepper, & un esperver, ou un chival, & ils sont seisies de cest service, & puis tout le rent est aderere, & ils distreigneront pur ceo, & le tenant a eux fait rescous. En cest cas quant a le rent & liver de Pepper ils averont deux Assises, & quant a lesperver, ou le chival forsq; un Assise. Et la cause pur que ils averont deux Assises, quant a le rent & liver de Pepper; est ceo, entant que ils fueront tenants en common en several titles, & quant ils fieront un done en le taile ou leas pur terme de vie, savant a eux le reversion, & rendant a eux certaine rent, &c. tiel reservation est incident a lour reversion, & pur ceo que lour reversion est en common, & per several titles, sicome lour possession fuit devant, le rent, & autres choses que poient estre severes, et fueront a eux reserves sur l'done, ou sur le leas, queux sont incidents per le ley a lour reversion, tiels choses illint reserves fueront de la nature del reversion. Et entant que l'reversion est a eux

dring to them yearly a certain rent, and a pound of Pepper, and a Hawk or a Horse, and they be seised of this service, and afterwards the whole Rent is behind, and they distrain for this, and the tenant maketh rescouse. In this case as to the rent and pound of Pepper they shall have two assises, and as to the Hawk or the Horse but one assise. And the reason why then they shall have two assises as to the rent and pound of Pepper is this, insomuch as they were Tenants in Common in several Titles, and when they made a gift in tail, or lease for life, saving to them the Reversion, and rendring to them a certain Rent, &c. such reservation is incident to their reversion, and for that their reversion is in common and by several titles as their possession was before the rent and other things which may be severed, and were reserved unto them upon the gift or upon the lease which are incidents by the Law to their reversion, such things so reserved were of the nature of the reversion. And in as much as the reversion is to them in common by several titles, it behoves

nants in Common be, and they grant a rent of 20 shillings per annum, out of their land, the Grantee shall have two rents of 10 shillings for that every mans grant shall be taken most strongly against himself, and therefore they be several grants in Law. Pl.Com. Hill & Granges case 171. Vide Sect. 259.

But if they two make a gift in tail, a lease for life or. reserving 20 shillings rent to them & their heirs they shall have but one 10 shillings, for they shall have no more then themselves reserved: and the Donee or lessee shall pay but 10 shillings according to their own express reservation: And albeit the reservation of rents severable be in joynt words, yet in respect of the several Reversions the Law makes thereof a severance. Now for the Rent, as namely 20 shillings or a pound of pepper may be severed, the one Tenant in Common may have an assise for the moity of 20 shillings, and the moity of a pound of Pepper, de medietate unius libr' piperis, but he cannot have an assise of ten shillings, or de dimidio libræ piperis, But for the Hawk or Horse, albeit they be tenants in common, they shal joyn in an assise, for otherwise they should be without remedy, for one of them cannot make his plaint in assise of the moity of a hawk, or a horse, for the Law will never suffer any man to demand any thing a-

Vid. 16. Ass. pl. 1. 16. E. 3. Joyndre en action 27.

gainst

gainſt the order of nature or reaſon, as before it appeareth by Littleton, Section 129. Lex enim ſpectat naturæ ordinem. Alſo the Law will never enforce a man to demand that which he cannot recover, and a man cannot recover (l) the moiety of a Hawk, Horſe, or of any other entire thing Lex neminem cogit ad vana, ſeu inutilia. But in that caſe they ſhall joyn in Aſſiſe, and the reaſon is, Ne Curia Domini Regis deficeret in juſtitia exhibenda, or lex non debet deficere conquerentibus in juſtitia exhibenda. And if they ſhould not join, they ſhould have damnum & injuriam, and yet ſhould have no remedy (*) by Law, which ſhould be inconvenient, but the Law will, that in every caſe where a man is wronged, and endamaged, that he ſhall have remedy. Aliquid conceditur ne injuria remaneret impunita quod alias non concederetur.

Regula. Vide Sect. 129.

(l) Lib. 5. fo. 21.

Regula.

Regula.

(*) 3. E. 3. 19. 2.

38. E. 3. 35. Regula.

en common per ſeveral titles, il covient que le rent, & le liver de Pepper, queux poient eſtre severs, ſoient a eux en common, & per ſeveral titles, et de ceo ils averont deux Aſſiſes, et chescun de eux en ſon Aſſiſe ferra ſon pleint de le moitie de le rent, & de le moitie del liver de Pepper, mes de leſperver, ou de chival que ne poient eſtre severs, ils averont forſque un Aſſiſe, car home ne poit faire un pleint en Aſſiſe de le moitie dun eſperver ne de le moitie dun chival, &c. En meſme le maner eſt dauter rents & dauter ſervices que Tenants en Common ount en groſſe per divers titles, &c.

verth that the rent and the pound of Pepper which may be ſevered, be to them in common and by ſeveral titles. And of this they ſhall have two Aſſiſes, and each of them in his Aſſiſe ſhall make his plaint of the moiety of the rent, and of the moiety of the Pound of Pepper. But of the Hawk or of the Horſe which cannot be ſevered, they ſhall have but one Aſſiſe, for a man cannot make a plaint in an Aſſiſe of the moiety of a Hawk, nor of the moiety of a Horſe, &c. In the ſame manner it is of other Rents, and of other Services which Tenants in Common have in groſs by divers titles, &c.

(m) And Tenants in Common ſhall joyn in a quare impedit, becauſe the preſentation to the Advowſon is entire.

(n) Alſo Tenants in Common of a Seigniory ſhall joyn in a Writ of right of Ward, and raviſhment of ward for the body, becauſe it is entire.

If two Tenants in Common be of the wardſhip of the body, and one doth ravith the Ward, and the one Tenant in Common releaſes to the Ravither, this ſhall go in benefit of the other Tenant in Common, and he ſhall recover the whole, and this releaſe ſhall not be any bar to him. And ſo it is if two Tenants in Common be of an Advowſon, and they bring a Quare impedit, and the one doth releaſe, yet the other ſhall ſue forth, and recover the whole preſentment.

Two Tenants in Common ſhall joyn in a detinue of Charters, and if the one be Non-ſuit, the other ſhall recover.

It is ſaid that Tenants in Common ſhall joyn in a Warrantia Chartæ, but ſeber in Voucher.

(m) 5. H. 7. 8. 13. E. 2. qu. imp. 170. 33. H. 6. 11. 6. E. 4. 10. 15. E. 3. darr. preſentment 10.

(n) 6. H. 4. 6. 7. 45. E. 3. 10. 30. H. 6. 25. 39 18. E. 3. 56.

18. E. 3. 56.

¶ *Moietie de chival, &c.* Here is implied or any other entire rent or ſervice.

¶ *Per divers titles, &c.* That is by ſeveral titles, and not by one joynt title, as hath been ſaid.

Sect. 315.

¶ *Averont tiels actions perſonals joyntment en touts lour noſmes, &c.* By this

¶ Item, quant al actiõs perſonals tenants en common averont tiels actiõs

Alſo as to Actions perſonals Tenants in common may have ſuch actions per-

29. E. 3. 51. 43. E. 3. 24. 46. E. 3. 27. 5 H. 4. 3. 14. H. 4. 31. 3. H 6. 37. 12. H. 6. 22. 22. H. 6. 14. 18. E. 4. 30. 2. R. 3. 16. 10. H. 7. 27. 21. H. 7. 22. 37 H. 6. 35. 21. E. 4. 12.

perſonals ioyntment en touts lour noimes, ſicome de treſpas, ou de offence que touche lour teneméts en common, ſicome de bruſer lour meaſons, de enfreinder de lour cloſes, de paſture, de gaſter, & de fouler des herbes, de couper lour bois, de piſcher en lour piſcharie, & hujuſmodi. Et en ceſt cas tenants en cõmon averont un action ioyntment & recoveront ioyntment lour damages, pur ceo que laction eſt en le perſonalty, & nemy en le realtie, &c.

ſonals joyntly in all their names as of treſpaſſe, or of offences which concern their Tenements in Common, as for breaking their houſes, breaking their cloſes, feeding, waſting, and defowling their graſs, cutting their woods, for fiſhing in their Piſchary and ſuch like. In this caſe Tenants in Common ſhall have one action jointly, and ſhall recover joyntly their damages, becauſe the action is in the perſonalty, and not in the realty, &c.

it appeareth that tenants in common ſhall have perſonal Actions joyntly. And it is to be obſerved, that where damages are to be recovered for a wrong done to Tenants in Common, or Parceners in a perſonal Action, and one of them die, the ſurvivor of them ſhall have the action, for albeit the property or eſtate be ſeveral between them, yet (as it appeareth here by Littleton) that perſonal action is joynt.

¶ *Et hujuſmodi.* Vid. Sect. 319. 320. 321.

Hereby is implied a diverſity between a chattel in poſſeſſion, and a perſonal Thoſe in action belonging unto them. As if two Tenants in Common be of Land, and one doth a treſpaſs therein, of this action they are joyntenants, and the ſurvivor ſhall hold place. So it is if two Tenants in common be of a Mannor, and they make a Bailiffe thereof, and one of them dieth, the Survivor ſhall have the Action of Account, for the Action given unto them for the arrearages upon the Account was joynt. So it is if two Tenants in Common ſow their Land, and one doth eat the ſame with his Cattel, though they have the Corn in Common, yet the Action given to them for treſpaſs in the ſame is joynt, and ſhall ſurvive. For the treſpaſs and damage done to them was joynt, all which here is implied by Littleton, who ſaith, that they ſhall have an Action joyntly, and the ſame Law is of Coparteners.

22. H. 6. 12.
38. E. 3. 7. 13. E. 3. account 126. 45. E. 3. 13. 14
37. H. 6. 32. 38.

But if two Tenants in Common be of goods, as of an horſe or of any other goods perſonal, there if one die, his Executors ſhall be Tenants in Common with the Survivor.

¶ *Et nemy en le realtie, &c.* If two Tenants in common be of an advowſon, and a ſtranger uſurp, ſo as the right is turned to an action, and they bring a Writ of Quare impedit which concerns the realty, the ſix months paſs, and the one dieth, the Writ ſhall not abate, but the ſurvivor ſhall recover, otherwiſe there ſhould be no remedy to redreſs this wrong. And ſo it is of Coparceners, and this is one exception out of our Authors rule.

38. E. 3. 5. 17. E. 3. 11.
3. H. 5. Quare Imp. 71.
14. H. 4. 12. 9. H. 6. 30. 2a
H. 4. 14. 37. H. 6. 9. b. 10.
Eliz. Dier 279. F. N. B. 34
9. E. 3. 36. 37. Pl. Com.
Sc. Senior Barkleys caſe.

(*) But if three Coparceners recover Land and damages in an Aſſiſe of Mordanceſter, albeit the judgment be joynt, that they ſhall recover the Land and damages, yet the damages being acceſſory, though they be perſonal, do in judgment of Law depend upon the Freehold, being the principal which is ſeveral. And though the words of the judgment be joynt, yet ſhall it be taken for diſtributive. And therefore if two of them die, the entire damages do not ſurvive, but the third ſhall have execution according to her portion, and this is another exception out of our Authors rule. But if all three had ſued Execution by force of an Elegit, and two of them had died, the third ſhould have had the whole by ſurvivor, till the whole damages be paid.

*) 14. F. 3. Execution 75.
45. E. 3. 3. b.

If the Aunt and Niece joyn in an action of waſte, for waſte done in the life of the other ſiſter, the Aunt ſhall recover the damages only, becauſe the ſame belongs not by Law to the Niece. And ſome hold the damages in that caſe to be the principal.

45. E. 3. 3. b. 48. E. 3. 14.
11. H. 4. 16. b. 35. H. 6.
23. b. 11. E. 2. Waſt. 115.

Sect. 316.

¶ Item ſi deux tenants en comyon font un leaſe de

A Lſo if two Tenants in Common make a Leaſe of their Te-

lour tenemẽts a un auter p̄ terin̄ des ans, rendant a eux certaine rent annualment durant l' terme si le rent soit aderere, &c. les tenants en cõmon averont un action de debt envers le lessee, & nemy divers actions, pur ceo que laction est en la personalty.

nements to another for term of years, rendring to them a certain Rent yearly during the term if the Rent be behind, &c. the Tenants in Common shall have an action of debt against the Lessee, and not divers actions, for that the action is in the personalty.

This upon that which hath been said is evident.

Sect. 317.

¶ Mes en avowry pur l' dit rent ils covient sever, Car ceo est en le realtie come le assise est supra.

But in an avowry for the said Rent they ought to sever, for this is in the realty, as the assise is above.

Vide 9.E.3.36.37. Pl.Com. Seignior Barkleys Case.

This being an addition to Littleton, albeit it be consonant to Law yet I omit it.

Sect. 318.

¶ Item, tenants en common poient bien faire partition enter eux sils voilent, coment q̄ ils ne serront compelles de faire partition per la ley, mes sils font enter eux partition per lour agreement & consent, tiel partition est allets bone, come est adiudge en le liver dassises.

Also tenants in common may well make partition between them if they will, but they shall not be compelled to make partition by the Law, but if they make partition between themselves by their agreement and consent, such partition is good enough, as is adjudged in the Book of Assises.

Of this sufficient hath been said in * the Chapter of Parceners and Joyntenants.

* Vide Sect.259.290. 247.264. 19.Ass.p.1.30.Ass.p.2. 47.E.3.22.

¶ *In le liver dassises.* This Book is of great Authority in Law, and is so called, because it principally containeth the proceeding upon Writs of Assise of Novel disseisin, which in those days was Festinum & frequens remedium.

Sect. 319.

¶ Item sicome y sont tenants en common de terres & tenements, &c. come est avant dit: En mesme le manner y sont de chattels reals & personals: Si come lease soit fait de certaine terres a deux homes pur terme de 20 ans, & quant ils sont de

Also as there be Tenants in Common of Lands and Tenements, &c. as aforesaid. In the same manner there be of Chattels reals and personals. As if a Lease be made of certain Lands to two men for term of 20 years, and when they be of this possessed, the

ceo

ceo poſſeſſes lun de les leſſees grant ceo q̄ a luy affiert durant le terme a un auter, donqz meſme celuy a que l' grant eſt fait, & lauter tiendzont & occupieront en common.

one of the leſſees grant that which to him belongeth to another during the term, then he to whom the grant is made, and the other ſhall hold and occupy in common.

¶ *Grant ceo que a luy affiert.* The ſame Law it is if the one Leſſee in this caſe make a Leaſe of part of the term; the ſecond Leſſee and the other are Tenants in Common as hath been ſaid in the Chapter of Joyntenants. The (&c.) in this Section, implieth other hereditaments whereof men may be Tenants in Common, whereof ſufficient hath been ſaid before. Vide Sect. 315.

Sect. 320.

¶ Item ſi deux ont ioyntm̄t le gard̄ de corps & de terre dun enfant deins age, & lun de eux granta a un auter ceo q̄ a luy affiert de m̄ le garde, donque le grantee & lauter que ne granta pas, aberont & tiendzont ceo en common.

ALſo if two have joyntly the wardſhip of the body and land of an Infant within age, and the one of them grant to another that which to himſelf belongeth of the ſame ward, then the grantee, and the other which did not grant ſhall have and hold this in common, &c.

¶ Hereby it appeareth, that there may be Tenants in common as well of chattels real entire, as wardſhip of the body, &c. as of chattels perſonal, as a Hawk or a Horſe. If two Tenants in common be of a Seigniory, and a ward fall, they are Tenants in common of the wardſhip as well of the body as land. And ſo it is if the land it ſelf eſcheat to them, they ſhall be Tenants in common thereof, and ſo it is of Parceners. 16. E. 3. tit. Aid.

¶ *En common, &c.* Here (&c.) implieth any other entire chattel. Vid. devant. Sect. 315.

Sect. 321.

¶ En meſme le maner eſt de chateux perſonals: Sicome deux ont ioyntment per done ou per achate un chival ou boefe, &c. et lun grant ceo que a luy affiert de meſme le chival ou boefe a un auter: donq̄s le grātee, & lauter que ne granta pas, aberont et poſſideront tiels chateux perſonals en cōmon. Et en tiels caſes, ou divers perſons ont chateaux reals ou perſonels en common et p̄ divers titles, ſi lun de eux mozuſt, les auters q̄ ſurveſquont, naveta ceo p̄ le ſurvivoz

IN the ſame manner it is of chattels perſonals. As if two have joyntly by gift or by buying a Horſe or an Oxe, &c. and the one grant that to him belongs of the ſame Horſe or Oxe to another, the grantee, and the other which did not grant ſhall have and poſſeſs ſuch Chattels perſonals in Common. And in ſuch caſes where divers perſons have Chattels real or perſonal in Common, and by divers titles, if the one of them dieth the others which ſurvive ſhall not have this as Survivor, but the exe-

vivoz

vivor, mes les executors celuy que mozust tiendzont et occupiet ceo ouesq eux que survesquont, sicome lour testator fist ou devoit en sa vie, &c. pur ceo q̄ lour titles & dzoits en ceo fueront several, &c.

cutors of him which dieth shall hold and occupy this with them which survive as their testator did or ought to have done in his life time, &c. because that their titles, and rights in this were several, &c.

Vide devant Sect. 315.

This is evident enough, and hereof sufficient hath been said before.

Sect. 322.

¶ Pur terme de ans, *&c.* for one year, half a year, &c.

¶ *Lun occupie tout & mist lauter hors de possession.* These are words materially added, for albeit one Tenant in common take the whole profits, the other have no remedy by Law against him, for the taking of the whole profits is no ejectment: But if he drive out of the land any of the cattel of the other Tenant in common, or not suffer him to enter or occupy the land, this is an ejectment or expulsion, whereupon he may have an Ejectione firmæ, for the one moity, and recover damages for the entry, but not for the mean profits.

¶ *Ejectione firmæ de la moity, &c.* Here by this and the other (&c.) in these two Sections, are to be understood divers diversities between actions which concern right and interest (as of Ejectione firmæ, Ejectment de gard, quare ejecit infra terminum of a chattel real upon an expulsion or ejectment) and actions concerning the bare taking of the profits rising of the Land or doing of Trespass upon the Land as here by the examples do appear, for the right is several, and the taking of the profits in common. The several diversity is between

21.E.4.11.22.43.E.3.24. 45.E.3.13.22.H.6.50.58. 8.H.6.17.19.H.6.57. 32.H.6.16.2.E.4.23. 24.E.4.8.18.E.4.30. 37.H.6.33. 21.E.3.29. 22.Ass.28. 47.E.3.22.b. 10.H.7.16.F.N.B.117.a 17.E.2.Account 122.

¶ Item en le case avantd̄ sicōe deux ont estat en common pur terme dans, &c. lun occupier tout, & mist lauter hors de possession et occupation, &c. donques celuy que est mise hors de occupation avera envers lauter briefe de Ejectione firmæ, de la moitie, &c.

ALso in the case aforesaid, as if two have an Estate in Common for term of years, &c. the one occupy all, and put the other out of possession and occupation, he which is put out of occupation shall have against the other a writ of *Ejectione firmæ* of the moiety, &c.

Sect. 323.

¶ En mesme le maner est, lou deux teignont le gard des terres ou tenements durant le nonage dū enfant, si lun ousta lauter de son possession il que est ouste avera briefe de Ejectment de gard de le moitie, &c pur ceo que ceux choses son chateux realx, et poyent estre apportions et severs, &c. Mes nul Action de Trespas, cestascavoir, Quare clausum suum fregit, & herbam suam, &c.

IN the same manner it is where two hold the wardship of Lands or Tenements during the nonage of an infant, if the one oust the other of his possession, he which is ousted shall have a writ of *Ejectment de gard* of the moity, &c. because that these things are Chattels reals, and may be apportioned and severed, &c. but no Action of Trespass (*videlicet*) *Quare clausum suum fregit, & herbam suam &c. conculcavit, & con-*

con-

conculcavit & consumpsit, &c. & hujusmodi actiones, &c. lun ne poit aver envers lauter, pur ĉ q̃ chescun de eux poit entrer et occupier ẽ cõmon, &c. per my et p tout les Terres & tenements queux ils teignont ẽ common. Mes si deux sont possesses de chattels personals en common per diverse titles, sicome dun Cheval ou Boef, ou Vache, &c. si lun prent ceo tout a luy hors de possession dauter, lauter nad nul ẽt remedie mes de prender ceo de luy q̃ ad fait luy l' tort, pur occupier en common, &c. quant il poit veier son temps, &c. En mesm le manner est de chattels reals, que ne poient estre severs, sicome en le case avantdit, que deux sõt possesse dun gard d' corps dun enfant deins age, si lun prent lenfant hors de possession dauter, lauter nad ascun remedie p ascun action per la ley mes de prend lenfant hors de le possession dauẽt quant il veit son temps.

sumpsit, &c. & hujusmodi actiones, &c. the one cannot have against the other, for that each of them may enter and occupy in common, &c. *per my & per tout*, the Lands and Tenements which they hold in common. But if two be possessed of Chattels personals in common by divers titles, as of a Horse, an Oxe, or a Cow, &c. if one take the whole to himself out of the possession of the other, the other hath no other remedy but to take this from him who hath done to him the wrong to occupy in common, &c. when he can see his time, &c. In the same manner it is of Chattels reals which cannot be severed, as in the case aforesaid, where two be possessed of the wardship of the body of an Infant within age, if the one taketh the the Infant out of the possession of the other, the other hath no remedy by an action by the Law, but to take the Infant out of the possession of the other when he see his time.

Chattels reals that are appertionable or severable, as Leases for years, wardship of Lands, interest of tenements by Elegit, Statute Merchant, Staple, &c. of Lands and tenements, and Chattels reals entire, as wardship of the body, a villain for years, &c. for if one tenant in common take away the Ward, or the villain, &c. the other hath no remedy by action, but he may take them again. Another diversity is betwean Chattels reals and Chattels personals, for if one Tenant in Common take all the Chattels personals, the other hath no remedy by action, but he may take them again, and herein the like Law is concerning Chattels reals entire, and Chattels personals for this purpose. But of Chattels entire, as of a ship, horse, or any other entire Chattel, real or personal, no surbise shall be betweem them that hold them in common: And Tenants in common shall not joyn in an Ejectione firmæ, nor in a writ of Ejectment de gard, or a Quare ejecit infra terminum, &c. for that these Actions concern the right of Lands which are several. 10.H.4. Tit. sp. 11.H.4.3. 21.E.4.11.12.

If two Tenants in Common be of a Mannor, to the which waife and strap doth belong, a strap doth happen, they are Tenants in common of the same, and if the one doth take the strap, the other hath no remedy by action, but to take him again. But if by prescription the one is to have the first beast happening as a strap, and the other the second, there an action lieth if the one take that which pertains to the other. 13.E.3. Briefe

If two Tenants in Common be of a Dove house, and the one destroy the old Doves whereby the flight is wholly lost, the other tenant in common shall have an action of Trespass, Quare vi & armis columbare le pl' fregit & ducentas columbas pretii 40 s. interfecit per quod volatum columbaris sui totaliter amisit: for the whole flight is destroyed, and therefore he cannot in bar plead Tenancy in Common. And so 47.E.3.22.b.

if

it is if two Tenants in Common be of a Park, and one deſtroyeth all the Deer, an Action of Treſpaſs lieth.

4.E.2.Treſpaſs 233.

(c) If two Tenants in Common be of Land, and of meer ſtones, pro meris & bundis, and the one take them up and carry them away, the other ſhall have an action of Treſpaſs Quare vi & armis againſt him, in like manner as he ſhall have for deſtruction of Doves.

(c) 1.H.5.1. 2.H.5.3.

(d) If two Tenants in Common be of a Folding, and the one of them diſturb the other to erect Hurdles, he ſhall have an Action of Treſpaſs quare vi & armis, for this diſturbance.

(d) 13.E.3.Treſpaſs 212 19.R.2.Br.927. 11.E.3. Treſpaſs 212. Vi.

(e) If two ſeveral owners of Houſes have a River in common between them, if one of them corrupt the river, the other ſhall have an action upon his caſe.

18.H.6.5. (e) 13.H.7.26.

(f) If two Tenants in Common, or Joyntenants be of an houſe or mill, and it fall in decay, and the one is willing to repair the ſame, and the other will not, he that is willing ſhall have a Writ de reparatione facienda, and the Writ ſaith, Ad reparationem & ſuſtentationem ejuſdem domus teneantur, whereby it appeareth that owners are in that caſe bound pro bono publico, to maintain Houſes and Mills which are for habitation and uſe of men.

(f) F.N.B.127.Reg.163

If one Joyntenant or tenant in Common of Land maketh his Companion his Bailiff of his part, he ſhall have an Action of Account againſt him, as hath been ſaid. But although one tenant in Common or Joyntenant without being made Bailiff take the whole profits, no Action of Account lieth againſt him, for in an Action of Account he muſt charge him either as a Guardian Bailiff, or Receiver, as hath been ſaid before, which he cannot do in this caſe, unleſs his companion conſtitute him his Bailiff. And therefore all thoſe Books which affirm that an Action of Account lieth by one Tenant in Common, or Joyntenant, againſt another, muſt be intended when the one maketh the other his Bailiff, for otherwiſe neither his Bailiff to render an account, is a good plea.

17.E.2.tit. Account 22. 8.E.2. Account 115. 30.E.1.Account 127.45. E.3.10. 47.E.3.22.b.38 E.3.9.22.E 3.60.3.E.3. 27.39 E. 27.82.F.N.B. 118.i. 10.H.7.16. 2.E 4.25.

If there be two Tenants in Common of a Wood, Turbary, Piſcary, or the like, and one of them doth waſte againſt the will of his companion, his companion ſhall have an action of waſte, and he that did the waſte before Judgment, hath election either to take his part in certainty by the Sheriff and the oath of men, &c. or that he grant, that from thenceforth he ſhall not do waſte but according to his portion, &c. and if he make choice of a certain place, then the place waſted ſhall be aſſigned to him. (g) But this extends not to Coparceners, becauſe they were compellable to make partition by the Common Law: and this, as it is ſaid, doth extend as well to Tenants in Common and Joyntenants for life, as to an eſtate of Inheritance. But if one Tenant in common, or Joyntenant of a Dove houſe, deſtroy the whole flight of Doves, no action of waſte doth lie in that caſe upon the ſaid Statute, * as ſome do hold.

W.2. c.23.

(g) 27.H.8.13.21.E.3.29 29.E.3.39. 3.E.2.Waſt. 35.F.N.B.59.d.F.N.B. 49. i.

* 47.E.3.22. 50.E.3.3.

If Lands be given to two, and to the heirs of one of them, and the tenant for life doth waſt, he that hath the inheritance ſhall have no action of waſte by the ſtatute of Glocester, but upon the ſtatute of W.2. he ſhall have an action of waſte. And it is to be known that one Tenant in common may infeoffe his companion, but not releaſe, becauſe the freehold is ſeveral. Joyntenants may releaſe, but not infeoffe, becauſe the freehold is joynt, but coparceners may both enfeoffe and releaſe, becauſe their ſeiſin to ſome intents is joynt, and to ſome ſeveral.

10.E.4.3.b.22.H.6.42. 21.E.3.47.17.E.3.47. 18.E.4.27.28.E.3.4.

Sect. 324.

¶ ITem quant un home voile mêter un feoffement fait a luy ou un done en le taile, ou un leaſe pur terme de vie daſcun fres ou tenemẽts, la il dirra, p force d quel feoffemẽt, done ou leas il fuit ſeiſie, &c. mes lou un voile pleade un leas ou grant fait a luy d chattel real ou perſonal, la il dirra, per force de quel il fuit poſſeſſe, &c.

ALſo when a man will ſhew a Feoffment made to him, or a gift in tail, or a leaſe for life of any lands or tenements, there he ſhall ſay, by force of which feoffement, gift, or leaſe, he was ſeiſed, &c. but where one will plead a leaſe or grant made to him of a chattel real or perſonal, then he ſhall ſay, by force of which he was poſſeſt, &c.

¶ Pluis ſerra dit de tenants en common en le Chapter de Releaſes, & tenant per Elegit.

More ſhall be ſaid of Tenants in Common, in the Chapters of releaſes and Tenant by *Elegit*.

¶ *Il fuit ſeiſie, &c.* Seiſie is a word of art, and in pleading is only applied to a freehold at leaſt, as Poſſeſſe for diſtinction ſake is to a Chattel real or perſonal.

As if B. plead a feoffement in fee, he concludeth, Virtute cujus prædict. B. fuit ſeiſitus, &c. But if he plead a leaſe for years, he pleadeth, Virtute cujus prædictus B. intravit, & fuit inde poſſeſſionatus, and ſo of Chatteis perſonals, Virtute cujus fuit inde poſſeſſionatus.

And this holdeth not only in caſe of Lands or Tenements which lie in liberty, but alſo of Rents, Advowſons, Commons, &c. and other things that lie in grant, whereof a man hath an eſtate for life or inheritance.

Alſo when a man pleads a leaſe for life, or any higher eſtate which paſſeth by Liberty, he is not to plead any entry, for he is in actual ſeiſin by the livery it ſelf. Otherwiſe it is of a Leaſe for years, becauſe there he is not actually poſſeſſed until an entry.

CHAP. 5. Of Eſtates upon Condition. *Sect.* 325.

¶ Eſtates, q̃ homes ount en terr̃s ou tenemẽts ſur condition ſont ð deux maners, ſcilicet, ou ils ont eſtate ſur condition ẽ fait, ou ſur conditiõ ẽ ley, &c. Sur condition ẽ fait eſt, ſicõe un hõe p fait endent enfeoffa un auter ẽ fee ſimple, reſervant a luy & a ſes heirs annualment certaine rent payable a un feaſt, ou a divers feaſts per an, ſur condition q̃ ſi l'rent ſoit aderere, &c. q̃ bien liſt al feoffor & a ſes heires en meſn̄s les terres ou tenements ð entr̃, &c. ou ſi terr̃ ſoit alien a un hõe en fee rendãt a luy certain rent, &c. & ſi happa q̃ le rent ſoit aderere p un lemaign̄ apres aſt̃ iour ð payment ð

EStates which men have in lands or tenements upon condition, are of two ſorts, *viz.* either they have eſtate upon Condition in Deed, or upon Condition in Law, &c. upon Condition in Deed is, as if a man by Deed indented, enfeoffs another in fee ſimple, reſerving to him and his heirs yearly a certain rent payable at one feaſt or divers feaſts *per annum*, on condition that if the rent be behind, &c. that it ſhall be lawful for the Feoffor and his heirs into the ſame lands or tenements to enter, &c. And if it happen the Rent to be behind by a week after any day of payment of it, or by a moneth after any day of payment of it, or by half a year, &c. that then it ſhall be lawful to the Feof-

¶ *Sur Condition.* Littleton having before ſpoken of Eſtates abſolute, now beginneth to entreat of Eſtates upon Condition. And a Condition annexed to the reality whereof Littleton here ſpeaketh in the legal underſtanding eſt modus, a quality annexed by him that hath Eſtate, Intereſt, or Right to the ſame, whereby an Eſtate, &c. may either be defeated, or inlarged, or created upon an incertain event. Conditio dicitur cum quid in caſum incertum qui poteſt tendere ad eſſe aut non eſſe confertur.

Glanvil Lib. 10. cap. 8. Bracton lib. 2. cap 5. 6. 7. &c. lib. 4. fol. 213 Brit. c. 36. & fol. 89. 99. 114. 130. 205. 206. 207. 249. Fleta lib. 3. ca. 9. & lib. 5 cap. 5. Mirr. cap. 2. Sect. 15. & 17.

¶ *Sur condition en fait, quæ eſt facti*, that is, upon a condition expreſſed by the party in legal terms of Law.

¶ *Ou ſur Condition en ley, &c.* quæ eſt juris, that is, tacitè created by Law without any words uſed by the party. Again, Littleton ſubdivideth Conditions in Deed (though not in expreſs words) into Conditions præcedent, (of which it is ſaid, Conditio adimpleri debet priuſquam ſequatur effectus) and Conditions ſubſequent. Again, of Conditions in Deed, ſome be affirmative, and ſome in the negative; and ſome in the affirmative, which imply a negative: ſome make the Eſtate, whereunto they are annexed, voydable by entrie or claim, and ſome make the eſtate

Estate void ipso facto, without entry or claim.

Also of conditions in deed, some be annexed to the rent reserved out of the land, and some to collateral acts, &c. some be single, some in the conjunctive, some in the disjunctive, as shall evidently appear in this Chapter, where the examples of these divisions shall be explained in their proper place.

Mir. cap. 2 Sect. 15. & 17

¶ *Enley, &c.* Of conditions in Law more shall be said hereafter in this Chapter.

¶ *Sur condition en fait, est sicome un home per fait indent, &c.* Here Littleton putteth one example of six several kinds of conditions. That is, first of a single condition in deed. Secondly, of a condition subsequent to the Estate. Thirdly, a condition annexed to the rent, &c. Fourthly, a condition that defeateth the estate. Fiftly, a condition that defeateth not the estate before an entry. And lastly, a condition in the affirmative, which implieth a negative, (as behind or unpaid implieth a negative) viz. not paid. All which do appear by the express words of Littleton.

ceo, ou per un mois apres ascun iour de payment de ceo, ou per un demy, &c. que adonques bien lirroit a le feoffor & a les heirs dentrer. &c. En ceux cases si le rent ne soit paie a tiel temps ou devant tiel temps limit & specifie deins le conditio comprises en lendenture, donques poit l' feoffor ou ses heirs entrer en tiels terres ou tenements & eux en son primer estate aver & tener, & de ceo ouste le feoffee tout net. Et est appelle estate sur condition pur ceo que le state le feoffee est defeasible si l' condition ne soit performe, &c.

for and his heirs to enter, &c. In these cases if the rent be not paid at such time or before such time limited and specified within the condition comprised in the Indenture, then may the feoffor or his heirs enter into such Lands or Tenements, & them in his former estate to have and hold, and the Feoffee quite to ouste thereof. And it is called an Estate upon Condition, because that the state of the Feoffee is defeasible, if the Condition be not performed, &c.

¶ *Rend a luy certaine rent, &c.* Here by this (&c.) is implied for life, in tail, or in fee.

¶ *Et en ceste case si le rent ne soit pay a tiel temps, &c. donques poit le feoffor ou ses heires entrer, &c.* By this Section, and by the (&c.) therein contained, six things are to be understood.

First, where our Author saith, Si le rent soit arere, that though the rent be behind and not paid, (b) yet if the Feoffor doth not demand the same, &c. he shall never re-enter, because the land is the principal debtor, for the rent issueth out of the Land, and in an Assise for the rent the land shall be put in view; and if the land be evicted by a title paramount, the rent is avoided, and after such eviction the person of the feoffee shall not be charged therewith, for the person of the feoffee was onely charged with the rent in respect of the grant out of the Land.

(b) 40. Ass. 11. 20. H. 6. 30. 31. 6. H. 7. 7. 19. H. 6. 76. 20. H. 6. 32. 22 H. 6. 46. Pl. com. Kidwelys case fol. 70. & Hill and Granges case fo. 73.

Secondly, The demand must be made upon the Land, because the Land is the debtor, and that is the place of demand appointed by Law.

Lib. 4. fol. 72. 73. Borroughes case.

If the King maketh a lease for years rendring a rent payable at his receipt at Westminster, and after the King granteth the Reversion to another and his heirs, the Grantee shall demand the rent upon the Land, and not at the Kings Receipt at Westminster: for as the Law without express words doth appoint the Lessee in the Kings case to pay it at the Kings Receipt, so in case of a subject, the Law appoints the demand to be on the land.

49. Ass. 5. 15. Ei. Di. 329

If there be a house upon the same, he must demand the Rent at the house. And he cannot demand it at the back door of the house, but at the fore door, because the demand must ever be made at the most notorious place. And it is not material whether any person be there or no.

Albeit the Feoffee be in the Hall, or other part of the house, yet the Feoffor need not (c) but come to the fore door, for that is the place appointed by Law, albeit the door be open.

(c) Bendloes en Tresp. 4. & 5. Ph. & Mar.

(d) If

(d) If the Feoffment were made of a Wood only the demand muſt be made at the gate of the Wood, or at ſome High-way leading through the Wood, or other moſt notorious place. And if one place be as notorious as another, the Feoffor hath election to demand it, at which he will, and albeit the Feoffee be in ſome other part of the Wood ready to pay the rent, yet that ſhall not avail him, Et ſic de ſimilibus. (d) 15. Eliz. Dier 329.

Thirdly, And if the Feoffor demand it on the ground at a place which is not moſt notorious, as at the back doore of a houſe, &c. and in pleading the Feoffor alledge a demand of the Rent generally at the houſe, the Feoffee may traverſe the demand, and upon the evidence it ſhall be found for him, for that it was a void demand.

Fourthly, If the Rent be reſerved to be paid at any place from the Land, yet it is in Law a Rent, and the Feoffor muſt demand it at the place appointed by the parties, obſerving that which hath been ſaid before concerning the moſt notorious place. Lib. 4. Boroughs caſe fo. 73. Pl. Com. 70.

Fifthly, And all this is to be underſtood when the Feoffee is abſent, for if the Feoffee cometh to the Feoffor at any place upon any part of the ground at the day of payment, and offer his Rent, albeit they be not at the moſt notorious place, nor at the laſt inſtant, the Feoffor is bound to receive it, or elſe he ſhall not take any advantage of any demand of the rent for that day.

Sixthly, therefore the place of demand being now known, it is further to be known what time the Law hath appointed for the ſame. This partly appeareth by that which hath been laſt ſaid. For albeit the laſt time of demand of the rent is ſuch a convenient time before the Sun ſetting of the laſt day of payment as the mony may be numbred and received, notwithſtanding, if the tender be made to him that is to receive it upon any part of the land at any time of the laſt day of payment, and he refuſeth, the condition is ſaved for that time, for by the expreſs reſervation the mony is to be paid on the day indefinitely and convenient time before the laſt inſtant, is the uttermoſt time appointed by law, to the intent that then both parties ſhould meet together, the one to demand and receive, and the other to pay it, ſo as the one ſhould not prevent the other. But if the parties meet upon any part of the Land whatſoever on the ſame day, the tender ſhall ſave the condition for ever for that time.

And if the reſervation of the rent be (as here Littleton purteth the caſe) at certain Feaſts, with condition that if it happen the rent to be behind by the ſpace of a week after any day of payment, &c. In this caſe the Feoffor needeth not demand it on the Feaſt day, but the uttermoſt time for the demand is a convenient time (as hath been ſaid) before the laſt day of the week, unleſs before that the Feoffee meet the Feoffor upon the land and tender the rent as aforeſaid. Lib. 5. fo. 114. Wades Caſe. Pl. Com. Hill & Granges caſe 167. 172. 20. H. 6. 30. 31. 6. H. 7. 3.

If a rent be granted payable at a certain day, and if it be behind and demanded that the Grantee ſhall diſtrain for it. In this caſe the Grantee need not demand it at the day, but if he demand it at any time after he ſhall diſtrain for it, for the Grantee hath election in this caſe to demand it when he will to inable him to diſtrain. Mich. 40. & 41. Eliz. int. Stanly & Read. Lib. 7. fo. 28. Maunders caſe.

¶ *Et eux en ſon primer eſtate aver, &c.* Regularly it is true that he that entreth for a condition broken ſhall be ſeiſed in his firſt eſtate, or of that eſtate which he had at the time of the eſtate made upon condition, but yet this faileth in many caſes. 3. H. 7. 7. b.

Firſt in reſpect of impoſſibility. As if a man ſeiſed of Lands in the right of his wife, maketh a feoffment in fee by deed indented, upon condition that the Feoffee ſhould demiſe the Land to the Feoffor for his life, &c. the husband dieth the condition is broken, in this caſe the heir of the husband ſhall enter for the condition broken, but it is impoſſible for him to have the eſtate that the Feoffor had at the time of the condition made: for therein he had but an eſtate in the right of his wife, which by the coverture was diſſolved. And therefore when the heir hath entred for the condition broken and defeated the Feoffment, his eſtate doth vaniſh and preſently the ſtate is veſted in the wife. 4. H. 6. 2. Lib. 8. fo. 43. 44 Whittinghams caſe. 5. H. 7. 6. 2.

2. In reſpect of Neceſſity. If Ceſty que uſe after the Statute of R. 3. and before the Statute of 27. H. 8. had made a Feoffment in fee upon condition, and after had entred for the condition broken. In this caſe he had but an uſe when the Feoffment was made, but now he ſhall be ſeiſed of the whole ſtate of the Land. So that as in the former caſe, the Anceſtor had ſomewhat at the making of the condition, and the heir ſhall have nothing when he hath entred for the condition broken, ſo in this caſe the Feoffor had no eſtate or intereſt in the Land at the time of the condition made, but a bare uſe; yet after his entry for the condition broken he ſhall be ſeiſed of the whole ſtate in the land, and that alſo for neceſſity. for by the Feoffment in fee of Ceſty que uſe, the whole eſtate and right was deveſted out of the Feoffees. And therefore of neceſſity the Feoffor muſt gain the whole eſtate by his entry for the Condition broken.

Tenant in ſpecial tail hath iſſue, and his wife dieth, Tenant in tail maketh a Feoffment in fee upon condition, the iſſue dieth, the condition is broken, the Feoffor re-enters, ſhe ſhall

have but an estate for life, as tenant in tail apres possibility of issue extinct by the re-entry, and yet he had an estate tail at the time of the Feoffement, and that also for necessity.

3. In some cases the Feoffor by his re-entry shall be in his former estate, but not in respect of some collateral qualities. As if Tenant by homage ancestrel maketh a Feoffment in fee upon condition, and entreth upon the condition broken, it shall never be holden by Homage ancestrel again. And so it is if a Copyhold escheat and the Lord make a Feoffment in fee upon condition, and entreth for the condition broken. And the reason in both these cases is, for that the custom or prescription for the time is interrupted.

15. Ass. 12. Lord and Tenant by fealty and rent, the Lord is in seisin of his rent, the Lord granteth his Seigniory to another and to his heirs upon condition, the Tenant attorneth and payeth his rent to the Grantee, the condition is broken, the Lord distraineth for his rent, and Rescous is made, he shall be in his former estate, and yet the former seisin shall not enable him to have an Assise without a new seisin.

8. H. 7. 7. If Tenant in tail make a Feoffment in fee upon condition, and dieth, the issue in tail within age doth enter for the condition broken, he shall be first in as Tenant in fee simple as heir to his father, and consequently and instantly he shall be remitted. But if the heir be of full age, he shall not be remitted, because he might have had his Formedon against the Feoffee, and the entry for the condition is his own act, but more shall be said hereof in his proper place in the Chapter of Remitter.

2. H. 6. 4. If a man make a feoffement in fee of black acre and white acre upon condition, &c. and for breach thereof that he shall enter into black acre, this is good.

43. Ass. 47. 13. E. 4. 4. 2. H. 5. 7. b. 39. Ass. 15. 11. H. 5. 25, 16. Ass. 47. If Tenant for life make a Feoffment in fee upon condition and entreth for the Condition broken, he shall be Tenant for life again, but subject to a forfeiture, for the state is revived, but the forfeiture is not purged.

Sect. 326.

"En meisme le manner est si terres sont donés en le taile, ou lesses a terme de vie ou des ans, sur condition, &c.

IN the same manner it is if lands be given in tail, or let for term of life or of years upon condition, &c.

¶ *Sur condition, &c.* This implieth the several kinds of conditions in Diet before specified.

Sect. 327.

Vide Sect. 332. 19 E. tit. b. fre 28. 19. R. 2. done rent 16. Pl. Com. 524.

"ET *la terre tener tanque ils soient satisfies ou payes de le rent aderere, &c.* By this is implied that if such a feoffment be made reserving (b) (for example) 8 Marks rent at the Feast of Easter, with such a Condition as is aforesaid, the feoffor at the feast day demands the rent, the feoffee payeth unto him 6 marks parcel of the rent, the Feoffor entreth into the lands and taketh the profits towards satisfaction. Afterwards the Feoffee doth tender the two Marks residue of the rent to the feoffor upon the land, who refuseth it. If

(b) 20. E. 3. tit. Coven. 3.

"MES lou feoffmēt est fait de certaine terres reservant certain rent, &c. sur tiel condition, q̄ si le rent soit aderere, q̄ bien lirroit al feoffor ō ses heires dentrer, ō la terre tener tanq̄ ils soient satisfies ou payes de le rent aderere, &c. En cest case si le rent soit aderer, ō le feoffor ou ses heires enter, le

BUt where a Feoffment is made of certain Lands reserving a certain rent, &c. upon such condition that if the Rent be behind that it shall be lawful for the Feoffor and his Heirs to enter, and to hold the Land until he be satisfied or payed the rent behind, &c. In this case if the Rent be behind, and the Feoffor or his

feoffee

feoffee neſt pas exclude de ceo tout net, mes le feoffor avera & tiendra la terre & prendra ent les profits tanq; il ſoit ſatisfie de le rent adere, & quant il eſt ſatisfie, donque poit le feoffée re-entrer en meſm̃ la terr̃, & ceo tener come il tenoit adevant. Cat en tiel cas le feoffor avera la t̃re forq; en maner come pur un diſtres, tanq; il ſoit ſatisfie d̃ le rent, &c. cõment q̃ il prendre les profits en le meane temps a ſon uſe demeſne, &c.

heirs enter, the Feoffee is not altogether excluded from this, but the Feoffor ſhall have and hold the land and thereof take the profits, until he be ſatisfied of the rent behind, and when he is ſatisfied, then may the feoffee re-enter into the ſame land, and hold it as he held it before. For in this caſe the Feoffor ſhall have the land but in manner as for a diſtreſs until he be ſatisfied of the rent, &c. though he take the profits in the mean time to his own uſe, &c.

hath been adjudged that the Feoffee upon the refuſal may enter into the land, for when the Feoffor is ſatisfied either by perception of the profits or by payment or tender and refuſal, or partly by the one and partly by the other, the Feoffee may re-enter into the Land. And this is within the words of Littleton, viz. (Until he be ſatisfied.) And albeit the Feoffor had accepted part of his rent, yet he may enter for the condition broken and retain the land until he be ſatisfied of the whole. All which is worthy of obſervation.

¶ *Et en tiel caſe le feoffor avera la terre forſque en manner come un diſtreſſe tanque il ſoit ſatisfie de la rent, &c.* By this it appeareth that the Feoffor by his re-entry, gaineth no eſtate of Freehold but an intereſt by the agreement of the parties to take the profits in nature of a Diſtreſs.

And therefore if a man maketh a Leaſe for life with a reſervation of a rent and ſuch a condition, if he enter for the condition broken and take the profits of the Land Quouſque, &c. he ſhall not have an action of debt for the rent Arere, for that the Freehold of the Leſſee doth continue, and therefore the Book (c) that ſeemeth to the contrary is falſe printed, and the true caſe was of a Leaſe for years, as it appeareth afterwards in the ſame page of the leaf.

(c) 30.E.3.fo.7.

But herein alſo a diverſity worthy the obſervation is implied, viz. If a man make a leaſe for years, reſerving a rent with a condition that if the rent be behind, that the Leſſor ſhall re-enter and take the profits until thereof he be ſatisfied, there the profits ſhall be accounted as parcel of the ſatisfaction, and during the time that he ſo taketh the profits he ſhall not have an action of debt for the rent, for the ſatisfaction whereof he taketh the profits. But if the condition be that he ſhall take the profits until the Feoffor be ſatisfied or paid of the rent, without ſaying (thereof) or to the like effect, there the profits ſhall be accounted no part of the ſatisfaction but to haſten the Leſſee to pay it, and as Littleton here ſaith, that until he be ſatisfied he ſhall take the profits in the mean time to his own uſe.

30.E.3.7. Vide ſemblab. 27.H.8.4. 43.E.3.21. 31.Aſſ.Pl.26. Vi. le ſtatute de Merton c.6. and obſerve theſe words, Quod inde percipere poſſint duplicem valorem, &c. Et c.1.7. without this word (Inde.)

Sect. 328.

¶ Item, divers parolx (ent̃ autres) ſont, queux p̃ vertue de eux meſmes font eſtates ſur condition, un eſt le parol Sub conditione: Si come A. enfeoffa B.

ALſo divers words (amongſt others) there be which by virtue of themſelves make eſtates upon condition, one is the word (*Sub conditione*) as if *A.* infeoffe *B.* of certain

¶ HEre in this and the next two Sections Littleton doth put four examples of words that make Conditions in Deed, and firſt Sub conditione. This is the moſt expreſs and proper condition in Deed, and therefore our Author beginneth with it.

Sub conditione. Mariæ Dier 138. 27.H.8.15.13.H.4.entr. Cong.57.29.Aſſ.7. 33.Aſſ.11.40.Aſſ.13. Bracton ubi ſupra. Fleta l.4.c.9. Brit.c.36. & ubi ſupra.

¶ *Talem reddit̃, &c.* This

Vide Sect.325.

This (&c.) impliеth any other rent or ſum in groſs, or any collateral condition whatſoever, either to be performed by the Feoffee, (whereof our Author here putteth his caſe) or by the Feoffor, and extendeth to all kinds of Conditions in Deed, before ſpecified.

de certaine terre, habendum & tenendum eidem B. & hæredibus ſuis, ſub conditione, quod idem B. & hæredes ſui ſolvant ſeu ſolvi faciant præfat' A. & hæredibus ſuis annuatim talem redditum, &c. **En ceſt caſe ſans aſcun pluis dire le Feoffee ad eſtate ſur condition.**

tain Land, to have and to hold to the ſaid B. and his Heirs, upon condition that the ſaid B. and his heirs do pay or cauſe to be paid to the aforeſaid A. and his heirs, yearly ſuch a Rent, &c. In this caſe without any more ſaying the Feoffee hath an Eſtate upon condition.

Sect. 329.

Proviſo Vid.Sect.220. Dier 28.H.8.fo.13. 27.H.8.fo.14.15. 13.H.4. Entre Cong.57. Seignior Cromwels caſe Lib.2.fo.71.72. at large 35.H.8.tit.conditio.Br. Lib.8.69.Frances caſe.

¶ *Proviſo ſemper qd' B. ſolvat, &c.*

Our Author putteth this caſe where a proviſo cometh alone. And ſo it is if a man by Indenture letteth Lands for years, provided always, and it is covenanted and agreed between the ſaid parties, That the Leſſee ſhould not alien, and it was adjudged that this was a condition by force of the Proviſo, and a covenant by force of the other words.

This word Proviſo ſhall be alſo taken as a limitation or qualification, as hereafter in his proper place ſhall be ſaid. And ſometime it ſhall amount to a Covenant. All which do appear by the Authorities in the margent. *

(*) 27.H.8.15, &c. Ita quod. Flet.l.4.c.9. Bract. ubi ſupra. Britt. ubi ſupra.

For the (&c) in this Section explanation is made in the Section next before.

¶ *Aury ſi les parols fueront tiels,* Proviſo ſemper, quod prædict' B. ſolvat, ſeu ſolvi faciat præfato A. talem redditum, &c. **ou fueront tiels.** Ita quod prædict' B. ſolvat ſeu ſolvi faciat præfato A. talem redditum, &c. **En ceux caſes ſauns pluis dire, le Feoffee nad eſtate forſque ſur condition, iſſint que ſil ne performaſt le condition, le feoffor & ſes heires poient entrer, &c.**

ALſo if the words were ſuch, Provided always that the aforeſaid B. do pay or cauſe to be paid to the aforeſaid A. ſuch a Rent, &c. Or theſe, So that the ſaid B. do pay or cauſe to be paid to the ſaid A. ſuch a rent, &c. In theſe caſes without more ſaying the Feoffee hath but an Eſtate upon condition: So as if he doth not perform the condition, the Feoffor and his Heirs may enter, &c.

¶ *Ou fueront tiels,* our Author maketh mention.

Ita quod. This is the third condition in Deed, whereof

Sect. 330.

6 E.2.Entrie cong.65. 8.E.2.Aſſ.320.adjudged. Quod ſi contingat. Paſch.37.El.Rot.254. inter Sayer & Hares in com. Bancc.

¶ *Quod ſi contingat &c.*

This is the fourth condition in Deed ſet down by our Author.

¶ *Denier, &c.* Hereby it is evident, That

¶ **Item auſy parols ſont en un fait queux cauſont les tenements eſtre conditionals. Sicõe ſur tiel feoffement**

ALſo there be other words in a Deed which cauſe the Tenements to be conditional: As if upon ſuch Feoffment a Rent be reſerved

ment un Rent eſt reſerve al Feoffor, &c. et puis ſoit mitte en le fait ceſt parol, Quod ſi contingat reditum prædict' a retro fore in parte vel in toto, quod tunc benè licebit a le Feoffor et a ſes heires dener, &c. ceo eſt un fait fait condition.

a rent be reſerved to the feoffor, &c. and afterward this word is put into the deed, that if it happen the aforeſaid rent to be behind in part or in all, that then it ſhall be lawful for the feoffor and his heirs to enter, &c. This is a Deed upon condition.

ſome words of themſelves do make a Condition, and ſome other (whereof our Author here is in the next Section * putteth an example) do not of themſelves make a condition without a concluſion & clauſe of re-entrie: And many times (Si) makes a Condition, and ſometimes a limitation, as hereafter ſhall be ſaid in this Chapter.

* Vi. Sect. 331.

3. H. 6. 7. Si. Flet. li. 4. ca. 9. Bract. lib. 4. fo. 213. b.

Ineſſe poteſt donationi modus, conditio, ſive cauſa. * Scito quòd (ut) modus eſt (ſi) conditio (quia) cauſa.

* 4. Mar. Dyer. 138. b.

Bract. ubi ſupra.

Conditio is explained before. Modus is at this day properly taken for a modification, limitation, or qualification, for the which alſo the Law hath appointed apt words; and becauſe Littleton ſpeaketh of this alſo in the end of this Chapter, I will reſerve this matter to his proper place, where the Reader ſhall perceive excellent matter of learning touching this point.

Cauſa, The cauſe or conſideration of the Grant, and herein there is a diverſity between a gift of lands, and a gift of an annuity, or ſuch like. For example, If a man grant an annuity pro una acra terræ, in this caſe this word pro ſheweth the cauſe of the Grant, and therefore amounteth to a condition: for if the acre of land be evicted by an elder title, the annuity ſhall ceaſe, for ceſſante cauſa ceſſat effectus.

Pro. 24. E. 3. 54.

And ſo if an annuity be granted pro decimis, &c. if the Grantee be unjuſtly diſturbed of the tithes, the annuity ceaſeth. And ſo it is if an annuity be granted pro conſilio, and the Grantee refuſeth to give counſel, the annuity ceaſeth. So if an annuity be granted quod præſtet conſilium, this makes the Grant conditional.

9. E. 4. 20. 32. E. 3. An. 30. 14. E. 4. 4. 15. E. 4. 2. b. 8. H. 6. 23. 5. E. 2. ti. 2. 44 41. E. 3. 19. 32. E. 1. Avowrie. 242. 21. E. 4. 45. 22. E. 4. 28. 35. H. 6 2. 10. E. 3. 44. 5. E. 2. 9. E. 4. 20. 15. E. 4. 3.

But if A. pro conſilio impenſo, &c. make a feoffment or a leaſe for life, of an acre, or pro una acra terræ, &c. albeit he denieth counſel, or that the acre be evicted, yet A. ſhall not reenter; for in this caſe there ought to be legal words of condition or qualification, for the cauſe or conſideration ſhall not avoid the ſtate of the Feoffee: and the reaſon of this diverſity is, for that the ſtate of the land is executed, and the annuity executory.

And yet ſometime in caſe of lands or tenements (Cauſa) ſhall make a condition. As if a woman give lands to a man and his heirs, cauſa matrimonii prælocuti, in this caſe if ſhe either marry the man, or the man refuſe to marry her, ſhe ſhall have the land again to her and to her heirs. (e) But of the other ſide, if a man give land to a woman and to her heirs, cauſa matrimonii prælocuti, though he marry her, or the woman refuſe, he ſhall not have the Lands again; for it ſtands not with the modeſty of women in this kind, to ask advice of learned Counſel, as the man may and ought: * And the rather, for that in the caſe of the woman ſhe may alter the cauſe, (for the reaſon aforeſaid) although it be not contained in the Deed, yea though the feoffment be made without Deed.

Flet. li. 5. ca. 34. 34. Aſſ. 1 40. Aſſ. 13. (e) 5. E. 2. Cui in vita 34 tit. Condition Br. 5. H. 4. 1.

* 12. E. 1. 1. Feoffments & Faits 114. F. N. B. 205 L. Vid. Sect. 365.

If a man maketh a feoffment in fee, ad faciendum, or faciendo, or ea intentione, or ad effectum, or ad propoſitum, that the Feoffee ſhall do or not do ſuch an act, none of theſe words make the ſtate in the land conditional: for in judgement of law they are no words of condition, and ſo was it reſolved, Hil. 18. in Eliz. Com. Banco, in the caſe of a common perſon; but in the caſe of the King, the ſaid or the like words do create a Condition: and ſo it is in the caſe of a Will of a common perſon, which caſe I my ſelf heard and obſerved.

Ad faciend. ea intentione &c. Dyer 138. 7. H. 4. 22. 31. H. 8. tit. Condition 19. Br. Pl. Com. 142. 38. H. 6. 33. 36. 37. Doct. & Stud. li. 2. ca. 34 27. H. 8. 18. a. 32. E. 3. Breve. 291.

But for the avoiding of a leaſe for years, ſuch preciſe words of condition are not ſo ſtrictly required as in caſe of Freehold and Inheritance. (f) For if a man by Deed make a Leaſe of a manor for years, in which there is a clauſe (And the ſaid Leſſee ſhall continually dwell upon the capital Meſſuage of the ſaid Manor, upon pain of forfeiture of the ſaid term) theſe words amount to a condition.

(f) 7. E. 6. Dyer 79. 28. H. 8 Dyer 27. a. Sub pœna forisfacturæ.

And ſo it is if ſuch a clauſe be in ſuch a leaſe, Quod non licebit, to the Leſſee, Dare, vendere, vel concedere ſtatum, & ſub pœna forisfacturæ, this amounts to make the leaſe for years defeaſible; and ſo was it adjudged in the Court of Common Pleas (g) in Queen Elizabeths time; and the reaſon of the Court was, That a Leaſe for years was but a Contract, which may begin by word, and by word may be diſſolved.

Quod non licebit. 3. E. 6. Dy. 65. 66. 4. Mar. 138. (g) Hil. 40. Eli. Ro. 1618 inter Browne & Ayer. Vid. Pl. Com. 142. Br. & Beſtons caſe.

Sect.

Sect. 331.

¶ Mes il est diversity pereuter cest parol (si contingat, &c.) et les parols proheine avantdits. Car ceux parolx, (Si contingat, &c.) ne valent riens a tiel condition, sinon que il ad ceux parolx subsequents, que bñ list al feoffor et a ses heires dentrer, &c. Mes en les cases avãtdits, il ne besoigne per la Ley, de mitter tiel clause, (scilicet) que le Feoffor et ses heyres poyent entrer, &c. pur ceo que ils poyent faire ceo per force des parols avantdits, pur ceo q̃ ils impreignont a eux mesmes en Ley un condition, scilicet, que le Feoffor et ses heires poyent entrer, &c. Uncore il est communement use en touts tiels cases avantdits ŏ mitter les clauses en les faits, scilicet, si le rent soit aderere, &c. que bien lirroit a le Feoffor et a ses heires dentre, &c. Et ceo est bien fait, a cel intent, pur declarer et expresser a les lays gents, que ne sont apprises en la Ley, de le manner et le condition de le feoffment, &c. Sicome home seisie de terre, lessa mesme la terre a un auter per fait indent pur terme des ans rendant a luy certain rent, il est use de mitter en le fait, que si le rent soit arere al iour de payment, ou per un semaigne, ou per un mois, &c. que adonque bien lirroit al Lessor a distreyñ, &c. uncoũ le lessor poit distreiñ de cõmon droit p̃ le rent arere, &c. coment que tiels parols ne unque fueront mises en le Fait, &c.

But there is a diversity between this word *Si contingat*, &c. & the words next aforesaid, &c. for these words, *Si contingat*, &c. are nought worth to such a condition, unless it hath these words following, That it shall be lawful for the Feoffor and his heirs to enter, &c. but in the cases aforesaid, it is not necessary by the Law to put such clause, *scilicet*, that the Feoffor and his heirs may enter, &c. because they may do this by force of the words aforesaid, for that they contain in themselves a condition, *scilicet*, That the Feoffor and his heirs may enter, &c. yet it is commonly used in all such cases aforesaid, to put the clauses in the Deeds, *scilicet*, if the Rent be behind, &c. that it shall be lawful to the Feoffor and his heirs to enter, &c. And this is well done, for this intent, to declare and express to the Common people who are not learned in the Law, of the manner and condition of the Feoffment, &c. As if a man seised of Land letteth the same Land to another by Deed indented for Term of years, rendering to him a certain Rent, it is used to be put into the Deed, That if the Rent be behind at the day of payment, or by the space of a week or a moneth, &c. that then it shall be lawful to the Lessor to distrein, &c. yet the Lessor may distrein of common right for the Rent behind, &c. though such words were not put into the Deed, &c.

¶ *Ils*

¶ *Ils ne beſoigne per la ley de mitter tiel clauſe, &c.* Quæ dubitationis cauſa tollendæ interuntur, communem legem non laedunt. Et expreſſio eorum quæ tacite inſunt, nihil operatur.

¶ *Per un mois, &c.* Here albeit the clauſe of diſtreſs be added, that if the Rent be behind by the ſpace of a week or a month, that the Leſſor may diſtrain, yet he may diſtrain within the week or month, becauſe a Diſtreſs is incident of Common right to every Rent Service. And the words be in the affirmative, and therefore cannot reſtrain that which is incident of Common right.

The other (&c.) in this Section upon that which hath been ſaid are evident.

Sect. 332.

¶ Item, ſi feoffment ſoit fait ſur tiel condition, que ſi le feoffor paya al feoffee a certain iour, &c. 40. l. dargent, que adonq; le feoffor poit rentrer, &c. en ceo cas le feoffee eſt appell tenant en morgage, que eſt autant adire en Francois come morgage, & en Latin, mortuum vadium. Et il ſemble que la cauſe, pur que il eſt appelle morgage, eſt, pur ceo que il eſtoyt en a werouſt ſi le feoffor hoyt payer, al iour limitte tiel ſumme ou non: & ſil ne paya pas, donque le terre que il mitter en gage ſur condition de payment de le money, eſt ale de luy a touts iours, & iſſint mort a luy ſur condition, &c. & ſil paya le money, donq; eſt le gage mort quant a le Tenant, &c.

Item, If a Feoffment be made upon ſuch condition, that if the feoffor pay to the feoffee at a certain day, &c. 40. pounds of money, that then the feoffor may re-enter, &c. In this caſe the Feoffee is called Tenant in morgage, which is as much to ſay in French, as mortgage, and in Latine *mortuum vadium*. And it ſeemeth that the cauſe why it is called mortgage is, for that it is doubtful whether the Feoffor will pay at the day limited ſuch ſum or not, and if he doth not pay, then the Land which is put in pledge upon condition for the payment of the money, is taken from him for ever, and ſo dead to him upon condition, &c. And if he doth pay the money, then the pledge is dead as to the Tenant, &c.

¶ *Morgage* is derived (c) of two French words, viz. Mort that is mortuum, and Gage that is vadium or pignus. And it is called in Latin mortuum vadium, or morgagium. Now it is called here Mortgage, or mortuum vadium, both for the reaſon here expreſſed by Littleton, as alſo to diſtinguiſh it from that which is called vivum vadium. Vivum autem dicitur vadium, quia nunquam moritur ex aliqua parte quod ex ſuis proventibus acquiratur. As if a man borrow a hundred pounds of another, and maketh an eſtate of Lands unto him, until he hath received the ſaid ſum of the iſſues and the profits of the Land, ſo as in this caſe neither morp nor Land dieth, or is loſt, (whereof Littleton hath ſpoken (d) before in this Chapter) and therefore it is called, Vivum vadium.

(c) Glanvil l. 10. c. 6. & lib. 13. cap. 26. 27.

(d) Vide Sect. 327.

Sect. 333.

¶ Item sicome hõe poit faire feoffment en fee en Moztgage, illint home poit faire done en taile en Moztgage, & un leas pur terme de vie, ou pur terme des ans en Moztgage, & touts tiels tenants sont appels tenants en Moztgage, solonque les estates, que ils ont en la terre, &c.

ALso as a man may make a feoffment in fee in Morgage, so a man may make a gift in Tail in Morgage, and a Lease for term of life, or for term of years in Morgage. And all such tenants are called tenants in morgage according to the Estates which they have in the Land, &c.

This Section upon that which hath been said, needeth no further explication.

Sect. 334.

27. H. 8. 19. b.

Lib. 8. fol. 91. Frances case.

¶ Que le feoffor paiera a tiel jour, &c. Albeit Conditions be not laboured, yet they are not always taken literally, but in this case the Law enableth the heir that was not named to perform the Condition for four causes.

First, because there is a day limited, so as the heir cometh within the time limited by the Condition, for otherwise he could not do it, as shall be said hereafter in this Chapter.

Secondly, For that the Condition descends unto the heir, and therefore the Law that giveth him an interest in the Condition, giveth him an ability to perform it.

Thirdly, for that the Feoffee doth receive no damage or prejudice thereby (all these reasons are expressly to be collected out of the words of Littleton) And these things being observed.

Fourthly, The intent and true meaning of the Condition shall be performed. And where it is here said, that the heir may render al jour assesse, &c. herein is implyed, that

¶ Item si feoffment soit fait en moztgage sur condition que le feoffor payera tiel summe a tiel iour, &c. come est enter eux per iour fait endent accorde & limit, coment que le feoffor morust devant le iour de payment, &c. uncore si le heire le feoffor paya mesme le summe de money a mesme le iour a le feoffee, ou tender a luy les deniers et le feoffee ceo refusa de receiver, donque poit l'heire entrer en l'terre, et uncore le condition est, que si le feoffour payera tiel summe a tiel iour, &c. nient feasant mention en le condition

ALso if a feoffment be made in morgage upon condition, that the Feoffor shall pay such a sum at such a day, &c. as is between them by their Deed indented agreed, and limited, although the Feoffor dieth before the day of payment, &c. yet if the heir of the Feoffor pay the same sum of money at the same day to the Feoffee, or tender to him the money, and the Feoffee refuse to receive it, Then may the heir enter into the Land, and yet the condition is that if the Feoffor shall pay such a sum at such a day, &c. not making men-

Dasum

dascun payment de-
ſt̄ fait per ſon heire,
mes pur ceo que le
heire ad intereſſe de
droit en le conditiō,
&c. et lentent fuit
forſque que les deni-
ers ſerront paies al
iour aſſeſſe, &c. et le
feoffee nad pluis dā-
mage, ſi il ſoit pay
per heire, que ſil fuit
pay per le pier, &c.
Et pur ceſt cauſe, ſi
le heir paya les de-
niers, au tendera les
deniers a le iour aſ-
ſeſſe, &c. et lauter ceo
refuſa il poet entrer,
&c. Mes ſi un eſtrāge
de ſa teſte demeſne,
que nad aſcun inter-
eſſe, &c. voile tender
les avantdits deniers
al feoffee a le
iour aſſeſſe, le feoffee
neſt pas tenus de
ceo receiver.

tion in the condition of any payment to be made by his heir, but for that the heir hath intereſt of Right in the Condition, &c. and the intent was but that the money ſhould be paid at the day aſſeſſed, &c. and the Feoffee hath no more loſs if it be paid by the heir, then if it were paid by the father, &c. therefore if the heir pay the money, or tender the money at the day limited, &c. and the other refuſe it, he may enter, &c. But if a ſtranger of his own head, who hath not any intereſt, &c. will tender the aforeſaid money to the Feoffee at the day appointed, the Feoffee is not bound to receive it.

the Executors or Adminiſtrators of the Mortgagor, or in default of them the Ordinary may alſo tender, as ſhall be ſaid (i) hereafter in this Chapter. But what if the Condition had been, if the Mortgagor or his Heirs did pay, &c. and he died before the day without heir, ſo as the condition became impoſſible, here it is to be obſerved, that where the condition becometh impoſſible to be performed by the act of God, as by death, &c. the ſtate of the Feoffee ſhall not be abolished, as ſhall be ſaid hereafter in this Chapter. And therefore the Law here inableth the Heir (of whom no mention was made in the Condition) to perform the Condition, leſt the Inheritance ſhould be loſt, wherein diverſ diverſities are worthy of obſervation.

(i) Vide Sect. 337.

Firſt, between a Condition annexed to a ſtate in Lands or Tenements upon a feoffment, gift in tail, &c. and a Condition of an Obligation, recognizance, or ſuch like. (g) For if a Condition annexed to Lands be poſſible at the making of the Condition, and become impoſſible by the Act of God, or the ſtate of the Feoffee, &c. ſhall not be abolished. As if a man maketh a feoffment in fee upon Condition, that the Feoffor ſhall within one year go the City of Paris about the affairs of the Feoffee, and preſently after the Feoffor dieth, ſo as it is impoſſible by the Act of God, that the Condition ſhould be performed, yet the eſtate of the Feoffee is become abſolute, for though the condition be ſubſequent to the ſtate, yet there is a precedency before the re-entry, viz. the performance of the condition. And if the Land ſhould by conſtruction of Law be taken from the Feoffee, this ſhould work a damage to the Feoffee, for that the Condition is not performed which was made for his benefit. And it appeareth by Littleton, that it muſt not be to the damage of the Feoffee, and ſo it is if the Feoffor ſhall appear in ſuch a Court the next term, and before the day the Feoffor dieth, the Eſtate of the Feoffee is abſolute. (h) But if a man be bound by Recognizance or Bond, with condition that he ſhall appear the next Term, in ſuch a Court, and before the day the Condiſor or Obligor dieth, the Recognizance or Obligation is ſaved, and the reaſon of the diverſity is, becauſe the ſtate of the Land is executed and ſetled in the Feoffee, and cannot be revested back again but by matter ſubſequent, viz. the performance of the condition. But the Bond or Recognizance is a thing in action, and executory, whereof no advantage can be taken until there be a default in the Obligee, and therefore in all caſes where a Condition of a Bond, Recognizance, &c. is poſſible at the time of the making of the Condition, and before the ſame can be performed, the condition becomes impoſſible by the act of God, or of the Law, or of the Obligee, &c. there the Obligation, &c. is ſaved. But if the Condition of a Bond, &c. be impoſſible at the time of the making of the Condition, the Obligation, &c. is ſingle. And ſo it is in caſe of a feoffment in fee with a condition ſubſequent, that is impoſſible, the ſtate of the Feoffee is abſolute, but if the Condition precedent be impoſſible, no ſtate or intereſt ſhall grow thereupon. And to illuſtrate this by examples you ſhall underſtand,

(g) Pl. Com. 456. Wrothes caſe. 14. H. 7. 3. 15. H. 7. 1. 14. E. 4. 3. 38. H. 6. 2. 3.

(h) 15. H. 7. 18. 31. H. 6. barre 60. 18 E. 4. 17. 9. Eliz. 262. Dyer li. 5. 22 Laughters caſe. 38. H. 6. 2

Fleta lib. 4. ca. 9. & Bracton & Britton ubi ſupra.

14.H.8.28.10.H.7.22. 4.H.7.4.8.E.4.1. 28.H.8.25. lib.5. fo.22. Laughters caſe & 75. 39.E.3.5. 17.H.6. Oblig.18.5.El.Dier 222

ſtand. If a man be bound in an Obligation, &c. with condition that if the Obligor do go from the Church of St. Peter in Weſtm. to the Church of St. Peter in Rome within three hours, that then the Obligation ſhall be void. The condition is void and impoſſible, and the Obligation ſtanderh good.

And ſo it is if a Feoffment be made upon condition that the Feoffee ſhall go as is afore-ſaid, the ſtate of the Feoffee is abſolute and the condition impoſſible and void.

* Pl.Com. Fullers caſe, 272.

* If a man make a leaſe for life upon condition that if the Leſſee go to Rome as is afore-ſaid, that then he ſhall have a fee, the condition precedent is impoſſible and void, and therefore no fee ſimple can grow to the Leſſee.

35.H.6.tit.barre 262. 37.H.6. barre 60. 2. E. 3.9. 9 Eliz.Dyer 262. 28.H.8.30.

If a man make a feoffment in fee upon condition that the Feoffee ſhall re-infeoffe him before ſuch a day, and before the day the Feoffor diſſeiſe the Feoffee and hold him out by force until the day be paſt, the ſtate of the Feoffee is abſolute, for the Feoffor is the cauſe wherefore the condition cannot be performed, and therefore ſhall never take advantage for non-performance thereof. (i) And ſo it is if A. be bound to B. that I.S. ſhall marry Jane G. before ſuch a day, and before the day B. marry with Jane, he ſhall never take advantage of the bond, for that he himſelf is the mean, that the condition could not be performed. And this is regularly true in all caſes.

(i) 4.H. 7.4. 30.H.8. Dyer 42. 11.H.4. 57. in protection. 10.H.7.18.

(k) Vide Bracton, Britton, Fleta ubi ſupra.

But it is commonly holden (k) that if the Condition of a Bond, &c. be againſt Law, that the Bond it ſelf is void.

Bracton lib.3.fo.100. 2.H.4.9. 8.E.4.12.b. 2.E.4.2.& 3.4.H.7.4 b. 10.H.7.22.14.H.8.28. 42.E.3.6.23.

But herein the Law diſtinguiſheth between a condition againſt Law for the doing of any act that is Malum in ſe, and a condition againſt Law (that concerneth not any thing that is malum in ſe) but therefore is againſt Law, becauſe it is either repugnant to the ſtate, or againſt ſome Maxim or rule in Law. And therefore the common opinion is to be underſtood of Conditions againſt Law for the doing of ſome act that is malum in ſe, and yet therein alſo the Law diſtinguiſheth. As if a man be bound upon condition that he ſhall kill I. S. the bond is void.

2. H. 4. 9.

Pl. Com. Brownings caſe, 133.

But if a man make a feoffment upon condition that the Feoffee ſhall kill I.S. the eſtate is abſolute, and the condition void.

If a man make a feoffment in fee upon condition that he ſhall not alien, this condition is repugnant and againſt Law, and the ſtate of the Feoffee is abſolute (whereof more ſhall be ſaid in his proper place.) But if the Feoffee be bound in a Bond, that the Feoffee his Heirs ſhall not alien, this is good, for he may notwithſtanding alien if he will forfeit his bond that he himſelf hath made.

7.H.6.43.b. 21.H.6.33. 21.H.7.11. 21.H.7.30. 20.E.4.8.

So it is if a man make a feoffment in fee upon condition that the Feoffee ſhall not take the profits of the Land, this condition is repugnant and againſt Law, and the ſtate is abſolute.

Pl. Com. in Brownings caſe, 133.a. 27.H.8.

But a Bond with a Condition that the Feoffee ſhall not take the profits is good. If a man be bound, with a condition to enfeoffe his wife, the Condition is void and againſt Law, becauſe it is againſt a maxim in Law, and yet the Bond is good, but if he be bound to pay his wife money, that is good. Et ſic de ſimilibus, whereof there be plentiful Authorities in our Books.

Vide Sect.325.

¶ *Tender les deniers al jour aſſeſſe, &c.* Note, hereby is implied that albeit a convenient time before Sun ſet be the laſt time given to the Feoffor to tender, yet if he render it to the perſon of the mortgage at any time of the day of payment, and he refuſeth it, the condition is ſaved for that time.

¶ *Il poit enter, &c.* And ſo may his Heir after his death.

¶ *Mes ſi eſtranger de ſa teſte demeſne que nad aſcun intereſſe, &c. voile tender les avantdits deniers al feoffee al jour aſſeſſe, le feoffee neſs pas tenus de ceo receiver.* Note, by this period and the (&c.) is implied that if the Mortgager die, his Heir within age of 14 years (the Land being holden in Socage) the next of kin to whom the Land cannot deſcend being his Guardian in Socage may tender in the name of the Heir, becauſe he hath an intereſt as Guardian in Socage. Alſo if the Heir be within age of 21 years, and the Land is holden by Knights Service, the Lord of whom the Land is holden may make the tender for his intereſt which he ſhall have when the condition is performed, for theſe in reſpect of their intereſt are not accounted ſtrangers.

Vide Sect.401. Hill.28.Eliz.in Banco Regis inter Watkins & Aſtwick pro terris in Com.Devon.45.E.3.tit. Releaſe 28. 32.E.1.tit. Annuity 51.33.H.6.13.

But if the Heir be an Idiot, of what age ſoever, any man may make the tender for him in reſpect of his abſolute diſability, and the Law in this caſe is grounded upon charity, and ſo in like caſes.

26.H.6.tit. barre 166. 33. E.1 tit. Annuity 51. 33 E.3. judgement 254.

¶ *Le feoffee neſs pas tenus de ceo receiver, &c.* And note that Littleton ſaith, that he is not bound to receive it at a ſtrangers hand. But if any ſtranger in the name of

of the Mortgagor or his Heir (without his conſent or priuity) tender the mony, and the Mortgagee accepteth it, this is a good ſatisfaction, and the Mortgagor or his heir agreeing thereunto may re-enter into the Land, Omnis ratihabitio retrotrahitur & mandato æquiparatur. But the Mortgagor or his Heir may diſagree thereunto if he will.

Sect. 335.

¶ ET memorandum que en tiel caſe, lou tiel tender de le money eſt fait, &c. q̄ le feoffee ou receiver ceo refuſa, per que le feoffor ou ſes heires entront, &c. donque le feoffee nad aſcun remedy daver l' money per le cõmon ley, pur ceo que il ſerra rette ſa follie que il refuſa le money quant un loyal tender de ceo fuit fait a luy.

AND be it remembred, that in ſuch caſe, where ſuch tender of the money is made, &c. and the Feoffee refuſe to receive it, by which the Feoffor or his heirs enter, &c. then the Feoffee hath no remedy by the common Law to have this mony, becauſe it ſhall be accounted his own folly that he refuſed the money, when a lawful tender of it was made unto him.

¶ *Tender d'le mony eſt fait, &c.* Here is implied at the due time and place according to the condition.

¶ *Entront, &c. viz.* into the Lands or Tenements.

¶ *Donque le feoffee nad aſcun remedie daver le money per le common ley, &c.* And the reaſon is becauſe the mony is collateral to the Land, and the Feoffee hath no remedy therefore. 8.E.2.tit.Aſſ.389. 31.Aſſ.32.

If an Obligation of an hundred pound be made, with condition for the payment of fifty pound at a day, and at the day the Obligor tender the mony, and the Obligee refuſeth the ſame, yet in action of debt upon the Obligation if the defendant plead the tender and refuſal, he muſt alſo plead that he is yet ready to pay the mony and tender the ſame in Court. But if the Plaintiff will not then receive it, but take iſſue upon the tender, and the ſame be found againſt him, he hath loſt the mony for ever. 22.H.6.39. 21.E.4.25. 22.E.3.5. Lib.9.fo.79.H. Peytoes caſe.

If a man be bound in 200 quarters of wheat for delivery of a 100 quarters, if the Obligor tender at the day the 100 quarters, &c. he ſhall not plead uncore prift, becauſe albeit it be the parcel of the condition, yet they be Bona peritura, and it is a charge for the Obligor to keep them. And the reaſon wherefore in the caſe of the Obligation the ſumme mentioned in the condition is not loſt by the tender and refuſal, is not only for that it is a duty and parcel of the Obligation, and therefore is not loſt by the tender and refuſal, but alſo for that the Obligee hath remedy by Law for the ſame. And in this caſe, Liberata pecunia non liberat offerentem. 8.E.2.tit.Aſſ.389.

But if a man make a ſingle Bond, or knowledge a Statute or Recogniſance, and afterwards made a defeaſance for the payment of a leſſer ſum at a day, if the Obligor or Conuſor tender the leſſer ſum at the day, and the Obligee or Conuſee refuſeth it, he ſhall never have any remedy by Law to recover it, becauſe it is no parcel of the ſum contained in the Obligation, Statute, or Recogniſance, being contained in the defeaſance made at the time or after the Obligation, Statute, or Recogniſance. And in this caſe in pleading of the tender and refuſal the party ſhall not be driven to plead, that he is yet ready to pay the ſame or to tender it in Court: neither hath the Obligee or Conuſee any remedy by Law to recover the ſum contained in the defeaſance. (o) And ſo it is if a man make an Obligation of 100 pound with Condition for the delivery of Corn or Timber, &c. or for the performance of an arbitrement, or the doing of any act, &c. This is collateral to the Obligation, that is to ſay, is not parcel of it, and therefore a tender and refuſal is a perpetual bar. 7.H.4.18. 5.Mar.Dier 150.21.E.4.25.22.E.3.5 33.H.6.2.b.17.Aſſ.pl.2. 20.E.4.1.b. 9.H.6.16. 36.H.6.26.15.E.4.1. 16.H.7.13. 18.E.3.53. 7.E.4.4.b.19.H.8.12. 27.H.8.1.2. 22.H.6.39.tit. Abatement 11. 49. E.3.3. 19.H.6.12. (o) Henry Peroes caſe, ubi ſupra.

But if a man be bound to make a feoffment in fee to the Obligee, and he make a Leaſe and a releaſe to him and his heirs, albeit this be a collateral condition, yet is it well perfor- med becauſe this amounts in Law to a Feoffment. 31 Aſſ.25.11.H.4.33. 1.H.6.8.1.E.4.17.E.3.3 Pl.Com. Fogaſſes caſe, fo.6.

¶ *Money, moneta, Legalis moneta Angliæ.* Lawful Money of England either of Gold or Silver, is of two ſorts, viz. the Engliſh money coined by the Kings Authority Lib.5.fo.114.115. Wades caſe. Lib.9.fo.79

authority, or foreign coin by Proclamation made current within the Realm, Coyne, cuna dicitur a cudendo, of coining of money. In French, Coine signifieth a corner, because in ancient time money was square with corners, as it is in some Countries at this day. Some say that Coine dicitur, a κοινός, id est, communis, quod sit omnibus rebus communis. Moneta dicitur à monendo, not only because he that hath it, is to be warned prudently to use it, but also because Nota illa de authore & valore admoneat. Pecunia dicitur a Pecu, beasts, Omnes enim veterum divitiæ in animalibus consistebant, and it appeareth that in Homers time, there was no money but exchange of Cattel, &c.

Aristotle Lib. 5. cap. 8.

(*) 9. H. 5. Stat. 2. Cap. 7

Nummus ἀπὸ τοῦ νόμου quia lege sit non natura. Vide * the Statute of 9. H. 5. of the noble, half noble, and farthing of gold, which is the fourth part of a noble, and that is 20 pence.

Sect. 336.

22. E. 3. Condic. 8. 13. Ed. 3. Ibid. 10. 12. Ass. 5.

¶ *Et sil faile de payer les deniers, &c.*

If a man make a feoffment of Lands, To have and to hold to him and his heirs, upon condition, That if the Feoffee pay to the Feoffor at such a day twenty pounds, that then the Feoffee shall have the lands to him and his heirs; if the condition had not proceeded further, it had been void, for that the Feoffee had a Fee simple by the first words, and therefore the words subsequent are materiall added. (And if he fail to pay the mony, &c.

Li. 5. fo. 96, 97. Goodales case.

¶ *Le second Feoffee voile tender le summe des deniers, &c.*

Albeit the second Feoffee be not named in the condition, yet shall he tender the summe, because he is privy in estate, and in judgment of Law hath an estate and interest in the condition, (as Littleton here saith) for the salvation of his Tenancy, Vi. Sect. 334. And note he that hath interest in the condition on the one side, or in the land on the other, may tender.

And it is to be ob-

Li. 5. fo. 114. 115. Wades case.

¶ Item si feoffment soit fait sur tiel condition, Que si le Feoffee paya al feoffor a tiel iour inter eux limit xx. l', adonques le Feoffee avera la Terre a luy et a ses heires, et sil faile de payer les deniers a le iour assesse, que adonque bien list a le Feoffor ou a ses heires dentrer, &c. et puis devant le iour assesse, le Feoffee venda la terre a un auter, et de ceo fait feoffment a luy, en cest case si le second Feoffee voile tender le summe de les deniers a le iour assesse a le Feoffor, et le Feoffor ceo refusa, &c. donque le second Feoffee ad estate en la terre clerement sans condition. Et la cause est pur ceo que le second feoffee avoit interest en le condition pur salvation de sa Tenancie. Et en cest case il semble que si le primer Feoffee apres tiel vender de la terre, voile tender l' money a

Also if a Feoffment be made on this condition, That if the Feoffee pay to the Feoffor at such a day between them limited, twenty pounds, then the Feoffee shall have the Land to him and to his heirs; and if he fail to pay the money at the day appointed, that then it shall be lawful for the Feoffor or his Heirs to enter, &c. and afterwards before the day appointed the Feoffee sell the Land to another, and of this maketh a Feoffement to him, in this case if the second Feoffee will tender the sum of money at the day appointed, to the Feoffor, and the Feoffor refuseth the same, &c. then the second Feoffee hath an estate in the land clearly without condition. And the reason is, for that the second Feoffee hath an interest in the condition for the safegard of his tenancy: and in this case it seems that if the first Feoffee after such sale of the land, will tender the

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le iour aſſeſſe, &c. a le feoffor, ceo ſerra aſſets bone pur ſalvation deſtate de le ſecond Feoffée, pur ceo que le prim Feoffee fuit prive a le condition, et iſſint le tender de aſcun de eux deux eſt aſſets bon, &c.

money at the day appointed, &c. to the feoffor, this ſhall be good enough for the ſafegard of the eſtate of the ſecond feoffee, becauſe the firſt feoffee was privy to the condition, and ſo the tender of either of them two is good enough, &c.

ſerved alſo, That the Feoffee may tender any mony that is current within the Realm, albeit it be forein coin, ſo as it be current by Act of Parliament, or by the Kings Proclamation, as hath been ſaid.

¶ *Tender le ſumme.* The Feoffee may tender the mony in purſes or bags, viz. to bring the mony in purſes or bags, which is the uſual manner to carry mony in, and then it is the part of the party that is to receive it, to put it out and tell it.

out ſhewing or telling the ſame, for he doth that which he ought,

¶ *A primer Feoffee.* Here it appeareth, that the firſt Feoffee may notwithſtanding his Feoffment, pay the mony to the Feoffor, becauſe he is party and privy to the Condition, and by his tender may ſave the eſtate of his Feoffee, which in all good dealing he ought to do.

Sect. 337.

¶ Item ſi Feoffement ſoit fait ſur condition, Que ſi le Feoffor paya certain ſumme dargent al Feoffee, adonqs bien liroit a Feoffor et a ſes heirs dentrer: en ceſt caſe ſi le Feoffor devie devant le payment fait, et lheire voile tender al feoffee les deniers, tiel tender ẽ voyd, pur ceo que le temps deins quel ceo doit eſtr̃ fait eſt paſſe, car quaunt le condition eſt, que ſi le Feoffor paya les deniers al Feoffee, &c. ceo eſt tant adire, que ſi le Feoffor durant ſa vie paya les deniers al feoffee, &c. et quant le Feoffor morust, don-

ALſo if a feoffment be made upon condition, That if the Feoffor pay a certain ſum of money to the Feoffee, then it ſhall be lawful to the Feoffor and his heirs to enter: in this caſe if the Feoffor die before the payment made, and the heir will tender to the Feoffee the money, ſuch tender is void, becauſe the time within which this ought to be done, is paſt. For when the condition is, That if the Feoffor pay the money to the Feoffee, &c. this is as much to ſay, as if the Feoffor during his life pay the money to the Feoffee, &c. & when the feof-

¶ THis diverſity is plain and evident, and agreeth with our (a) Books, and yet ſomewhat ſhall be obſerved hereupon: for here it appeareth, that ſeeing no time is limited, the law doth appoint the time, and that is, during the life of the feoffor. Wherein divers diverſities are worthy the obſervation:

(a) 14.H.7.31.15.H.7.1.

Firſt, between this caſe that Littleton here putteth of the condition of a Feoffment in fee, for the payment of mony where no time is limited, and the condition of a Bond for the payment of a ſumme of mony where no time is limited: for in ſuch a condition of a Bond the mony is to be paid preſently, that is, in convenient time. (b) And yet in caſe of a condition of a bond there is a diverſity between a condition of an obligation, which concerns the doing of a tranſitory act without limitation of any time, as payment of mony, delivery of Charters, or the like, for there the condition is to be performed preſently, that is, in convenient time, and when by the condition of the Obligation the act that is to be done

44.E.3.9. 33.H.6.45.& 48.b.4.E.4.29.9.E.4.22 15.E.4.30.21.E.4.38.b. 9.H.7.17.b. 10.H.7.15. 14.H.8.21.a.& 29.b.

(b) Lib.6. fol.30.31. Boothies caſe. 33.H.6. 47.48.

done to the Obligee is of his own nature local, for there the Obligor (no time being limited) hath time during his life, to perform it, as to make a Feoffment, &c. if the Obligee doth not hasten the same by request. In case where the condition of the Obligation is local, there is also a diversity, when the concurrence of the Obligor and the Obligee is requisite, (as in the said case of the Feoffment) and when the Obligor may perform it in the absence of the Obligee, as to knowledge satisfaction in the Court of Kings Bench, * although the knowledge of satisfaction is local, yet because he may do it in the absence of the Obligee, he must do it in convenient time, and hath not time during his life.

(*) Boothies case, ubi supra.

4 Another diversity is, where the condition concerneth a transitory or local act, and is to be performed to the Feoffee or obligee, and where it is to be performed to a stranger: as if A. be bound to B. to pay ten pounds to C. A. tender to C. and he refuseth, the Bond is forfeited, as in this Section shall be said more at large.

5 Another diversity is between a condition of an Obligation, and a condition upon a Feoffment, where the Act that is local is to be done to a stranger, and where to the Obliger or Feoffor himself. As if one make a feoffment in fee, upon condition that the Feoffee shall infeoffe a stranger, and no time limited, the Feoffee shall not have time during his life to make the feoffment, for then he should take the profits in the mean time to his own use, which the Estranger ought to have, and therefore he ought to make the Feoffment as soon as conveniently he may, and so it is of the Condition of an Obligation. But if the Condition be, That the Feoffee shall re-infeoffe the Feoffor, there the Feoffee hath time during his life, for the nature of the condition between them, unless he be hastened by request, as shall be said hereafter.

Boothies case l. 6. fo. 31. Lib. 3. fo. 79. b. Seignior cromwels case. 44. E. 3. 9 a. 1. E. 4. 4. 2. E. 4. 3. 4. 19. H. 6. 67. 73. 76. 4. E 4. 4. b. 26. H. 8. 9. b.

6 Another diversity is, when the Obligor or Feoffee is to infeoffe a stranger, as hath been said, and when a stranger is to infeoffe the Feoffee or Obligee: As if A. infeoffe B. of black Acre, upon condition that if C. infeoffe B. of white Acre. A. shall re-enter. C. hath time during his life, if B. doth not hasten it by request, and so of an Obligation.

7 But in some cases albeit the condition be collateral, and is to be performed to the Obligee, and no time limited, yet in respect of the nature of the thing, the Obligor shall not have time during his life to perform it. As if the Condition of an Obligation be, to grant an annuity or yearly rent to the Obligee during his life, payable yearly at the feast of Easter, this annuity or yearly rent must be granted before Easter, or else the obligee shall not have it at that feast during his life, & sic de similibus, and so was it resolved by the Judges (*) of the Common Pleas in the Argument of Andrews case, which I my self heard.

14. E. 3. Det. 158. l. 2. fo. 80. Seignior Cromwells case. (*) Vid. Dier 14. El. 311

8 Lastly, When the Obligor, Feoffor, or Feoffee is to do a sole act or labour, as to go to Rome,

ques le temps de le tender est passe. Mes autrement est lou un iour de payment est limit, et le feoffor devie devaunt le iour, donque poet le heire tender les deniers come est avauntdit, pur ceo que le temps de le tender ne fuyt passe per le mort del feoffor. Auxy il semble que ẽ tiel case lou le feoffor devy devant le iour de payment, si les Executors de le feoffor tendront les deniers al feoffee al iour de payment, cel tender est assets bon. Et si le feoffee ceo refuse, les heires de feoffor poient entrer, &c. Et le cause est, pur ceo que les Executors representont l' person lour Testator, &c.

for dieth, then the time of the tender is past. But otherwise it is where a day of payment is limited, and the feoffor die before the day, then may the heir tender the money as is aforesaid, for that the time of the tender was not past by the death of the Feoffor. Also it seemeth, That in such case where the Feoffor dieth before the day of payment, if the Executors of the Feoffor tender the money to the Feoffee at the day of payment, this tender is good enough, and if the Feoffee refuse it, the heirs of the feoffor may enter, &c. And the reason is, for that the Executors represent the person of their Testator, &c.

Rome, Jeruſalem, &c. In ſuch and the like caſes, the Obligor, Feoffor, or Feoffee hath time during his life, and cannot be haſtened by requeſt. And ſo it is if a ſtranger to the Obligation or Feoffment were to do ſuch an act, he hath time to do it at any time during his life.

¶ *Si les executors del feoffor tendront, &c.* So as now it appeareth that either the heir of the Feoffor, or his Executors may (when a day is limited) pay the money, and ſo alſo may the Adminiſtrator of the Feoffor do, if the Feoffor dye inteſtate (f) and this may the Ordinarie do if there be neither Executor nor Adminiſtrator, as hath been ſaid. L. b. 5. fol. 96. 97. Goodales caſe. (f) Vide Sect. 334.

¶ *Et le feoffee refuſe, les heires del feoffor poient entrer, &c.* Nota a tender by the Executors or Adminiſtrators, and a refuſal, doth give the heir of the Feoffor a title of entry. And here by this (&c.) is a diverſity implyed, when a tender and refuſal ſhall give a third perſon title of entry.

If a man be bound to A. in an Obligation with Condition to infeoffe B. (who is a meer ſtranger) before a day, the Obligor doth offer to enfeoffe B. and he refuſeth, the Obligation is forfeit, for the Obligor hath taken upon him to enfeoffe him, and his refuſal cannot ſatisfie the Condition, becauſe no feoffment is made, but if the feoffment had been by the Condition to be made to the Obligee, or to any other for his benefit or behoof, a tender and refuſal ſhall ſave the Bond, becauſe he himſelf upon the matter is the cauſe wherefore the Condition could not be performed, and therefore ſhall not give himſelf cauſe of action. But if A. be bound to B. with Condition that C. ſhall enfeoffe D. In this caſe if C. tender, and D. refuſe, the Obligation is ſaved, for the Obligor himſelf undertaketh to do no act, but that a ſtranger ſhall enfeoffe a ſtranger. And it is holden in Books, (h) that in this caſe it ſhall be intended, that the feoffment ſhould be made for the benefit of the Obligee. Some to reconcile the Books, ſeem to make a difference between an expreſs refuſal of the ſtranger, and a readineſs of the Obligor at the day and place to make performance, and the abſence of the ſtranger: but that can make no difference. I take it rather to be the error of the Reporter, and the Records themſelves are neceſſary to be ſeen, for the Law herein is, as it hath been before declared. 33. H. 6. 16. 17. 36. H. 6. 8. 2. E. 4. 2. 3. 15 E. 4. 5. 6. 22. E. 4. 13. 32. E. 3. barre 264. 7. E. 3. 29. 9 H. 7. 17. 10. H. 7. 14. b. 35. H. 8. Dier 56. lib. 5. fol. 23. Lambs caſe. (h) 8. E. 4. 14. 2. E. 4. ubi ſupra.

If I enfeoffe one in fee upon condition to infeoffe I.S. and his heirs, the Feoffee tenders the feoffment to I.S. and he refuſeth it, the Feoffor may re-enter, for by the expreſs intent of the Condition, the Feoffee ſhould not have and retain any benefit or eſtate in the land, but as it were an inſtrument to convey over the land. 19. H. 6. 34.

But in that caſe if the Condition were to make a gift in tayl to I.S. and he refuſeth it, and a tender and refuſal is made, there the Feoffor ſhall not re-enter, for that it was intended that the Feoffee ſhould have an eſtate in the land. And ſo it is if a feoffment be made upon Condition that the Feoffee ſhall grant a Rent Charge to a ſtranger, if the Feoffee tender the grant and he refuſeth, the Feoffor ſhall not re-enter, becauſe the Feoffee was to retain the land, which points are worthy of due obſervation. 2. E. 4. Entrie conge. 252

Here in the caſe of Littleton, when the Executors make the tender, and the Feoffee refuſeth, albeit the heir be a third perſon, yet is he no ſtranger, but he & the Executors alſo are privies in Law.

¶ *Le perſon del teſtator, &c.* This is to be underſtood concerning goods and chattels either in poſſeſſion or in action, and the Executor doth more actually repreſent the perſon of the Teſtator, then the heir doth the perſon of the Anceſtor. For if a man bindeth himſelf, his Executors are bound though they be not named, but ſo it is not of the heir: Furthermore, here the Adminiſtrators and the Ordinary alſo are implyed, as before hath been ſaid.

Sect. 338.

¶ Et nota que en touts caſes de condition de payer le certaine ſumme en groſſe, touchant terres ou tenements, ſi loyall tender ſoit un

AND note that in all caſes of condition for payment of a certain ſum in groſs touching lands or tenements, if lawful tender be once re-

¶ This is to be underſtood, that he that ought to tender the money, is of this diſcharged for ever to make any other tender, but if it were a duty before, though the Feoffor enter by force of the Condition, yet the debt or duty remaineth. As if A. borrowerh a hundred Vide Sect. ſequen.

hundred pound of B. and after mortgageth land to B. upon Condition for payment thereof. If A. tender the money to B. and he refuseth it, A. may enter into the Land, and the land is freed for ever of the Condition, but yet the debt remaineth, and may be recovered by Action of Debt. But if A. without any loan, debt, or duty preceding infeoffe B. of land upon Condition for the payment of a hundred pounds to B. in nature of a gratuity or gift. In that case if he tender the hundred pound to him according to the Condition and he refuseth it, B. hath no remedy therefore, and so is our Author in this and his other cases of like nature to be understood.

soits refuse, celuy q̄ duissoit tender le money est ō ceo accouth, & pleinm̄t discharge per touts temps apres.

fused, he which ought to tender the money is of this quite and fully discharged for ever afterwards.

Sect. 339.

"Piera tiel summe a tiel jour, &c. here is implyed that this payment ought to be real and not in shew or appearance. For if it be agreed between the Feoffor and the Executors of the feoffee that the Feoffor shall pay to the Executors but part of the money, and that yet in appearance the whole sum shall be paid, and that the residue shall be repaid, and accordingly at the day and place, the whole sum is paid, and after the residue is repaid, this is no performance of the Condition, for the state shal not be devested out of the heir which is a third person, without a true and effectual payment, and not by a shadow or colour of payment, and the agreement precedent doth guide the payment subsequent.

18.E.4.fol.18.Lib.5.fol. 96. Goodales Case. 19.H.6.54. 20. E.3. Account Pl. 70.

And by this Section also it appeareth, that the Executors do more represent the person of the Testator, than the heir doth to the Ancestor, for though the Executor be not named, yet the

Item ū le feoffee en mortgage, devant le jour de payment que serroit fait a luy face ses executors & devie et son heire enter en le terre come il devoit, &c. il semble en cest cas que le feoffor doit payer le money al jour assesse al executors, & nemy al heire le feoffee, pur ceo que le money al commencemēt trenchast al feoffee en maner come un dutie, et serra entendue que lestate fuit fait per cause de le prompter de le money per le feoffee, ou pur cause dauter dutie. Et pur c̄ le paym̄t ne serra fait al heire, come il semble. Mes les parols del condition poyent estre tiels, que le payment serra fait al heire, come ū le condition fuit, que ū le feoffor paya al feoffee, ou a ses heires, tiel summe a tiel jour, &c. la apres

Also if the Feoffee in morgage before the day of payment which should be made to him, makes his Executors and die, and his heir entreth into the land as he ought, &c. It seemeth in this case that the Feoffor ought to pay the money at the day appointed to the Executors, and not to the heir of the Feoffee, because the money at the beginning trenched to the Feoffee in manner as a duty, and shall be intended that the estate was made by reason of the lending of the money by the Feoffee, or for some other duty, and therefore the payment shall not be made to the heir, as it seemeth, but the words of the Condition may be such, as the payment shall be made to the heir. As if the Condition were, that if the Feoffor pay to the Feoffee or to his heirs such a sum at

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la moyt le feoffee ſil moyuſt devant l'jour limit, l'payment doit eſtre fait al heir al jour aſſeſſe, &c.

ſuch a day, &c. there after the death of the feoffee, if he dieth before the day limited, the payment ought to be made to the heir at the day appointed, &c.

Law appoints him to receive the money, but ſo doth not the Law appoint the heir to receive the money unleſs he be named.

¶ *Doit eſtre fait al heire al jour aſſeſſe, &c.* And here it alſo appeareth that if the condition upon the mortgage be to pay to the Mortgagee or his heirs the money, &c. and before the day of payment the Mortgagee dieth, the Feoffor cannot pay the money to the Executors of the Mortgagee: For Littleton ſaith that in this caſe the payment ought to be made to the heir. Et in hoc caſu deſignatio unius perſonæ eſt excluſio alterius, & expreſſum facit ceſſare tacitum. And the Law ſhall never ſeek out a perſon, when the parties themſelves have appointed one. But if the condition be to pay the money to the Feoffee his heirs or Executors, then the Feoffor hath election to pay it either (m) to the heir or Executors.

Vid. Lib. 5. fol. 96. Goodales caſe Dier. 2. Eliz. 181. 44. E. 3. 1. b.

(m) 12. E. 3. condition 8. & 10.

If a man make a feoffment in fee upon condition that the Feoffee ſhall pay to the Feoffor his heirs or aſſigns 20 pound at ſuch a day, and before the day the feoffor make his Executors and dieth, the Feoffee may pay the ſame either to the heir or to the Executors, for they are his aſſigns in Law to this intent. But if a man make a feoffment in fee upon condition, that if the feoffor pay to the feoffee his heirs or aſſigns 20 pound before ſuch a feaſt, and before the ſeaſt the feoffee maketh his Executors and dieth, the feoffor ought to pay the money to the heir, and not to the Executors, for the Executors in this caſe are no aſſignees in law, & the reaſon of this diverſity is this, for that in the firſt caſe the Law muſt of neceſſity find out Aſſigns, becauſe there cannot be any aſſigns in Deed, for the feoffor hath but a bare condition and no eſtate in the Land which he can aſſign over. But in the other caſe the Feoffee hath an eſtate in the land which he may aſſign over, and where there may be Aſſignes in Deed, the Law ſhall never ſeek out or appoint any aſſignes in Law. And albeit the Feoffee made no aſſignment of the eſtate, yet the executors cannot be aſſignees, becauſe aſſigns were only intended by the condition to be aſſignees of the eſtate, and ſo was it reſolved (†) Mich. 23. & 24. Eliz.) by the two chief Juſtices in the Court of Wards between Randall and Browne, which I obſerved.

27. H. 8. 2. 3. & 4. Ph. & Mar. 140. 2. (†) Mic. 23. & 24 Eliz. in Curia Wardorum. Inter Randal & Browne. Vid. 2. Eliz. Dier 181. Pl Com. Chapmans caſe 186. 288. Vid. Goodales caſe. lib. 5. fol. 96, 97. 17. Aſſ. pl. 2. Goodales caſe ubi ſupra

But if the condition be to pay the money to the Feoffee his heirs or aſſigns, and the Feoffee make a feoffment over, it is in the election of the Feoffor to pay the money to the firſt Feoffee or to the ſecond Feoffee, and ſo if the firſt Feoffee dyeth the Feoffor may either pay the money to the heir of the firſt Feoffee or to the ſecond Feoffee, for the Law will not enforce the Feoffor to take knowledge of the ſecond feoffment, nor of the validity thereof, whether the ſame be effectual or not, but at his pleaſure, and the firſt Feoffee and his heirs are expreſſly named in the Condition.

Sect. 340.

¶ Item ſur tiel caſe de feoffment en Mortgage, queſtion ad eſte demaunde en quel lieu le feoffour eſt tenus de tender les deniers a l'feoffee al jour aſſeſſe, &c. Et aſcuns ont dit, que ſur la terre ſont tenus en Mortgage pur ceo que l'condition eſt dependant ſur le fre; Et ont dit, q

Alſo upon ſuch caſe of feoffment in Morgage, a queſtion hath been demanded in what place the Feoffor is bound to tender the money to the Feoffee at the day appointed, &c. And ſome have ſaid, upon the land ſo holden in Morgage, becauſe the condition is depending upon the land. And they

¶ *Item ſur tiel caſe de feoffment en morgage queſtion ad eſte demande, &c.* Here and in other places that I may ſay once for all, where Littleton maketh a doubt, and ſetteth down ſeveral opinions and the reaſons, he ever ſetteth down (†) the better opinion and his own laſt, and ſo he doth here. (n) For at this day this doubt is ſett'ed, having been oftentimes reſolved, that ſeeing the money

†Vid. Sect. 170. 302. 375. (n) 8 E. 4. 4. & 14. 11. H. 4. 62. 17. Aſſ. p. 2. 17 E. 3. 2. 21. H. 7. Keylway 74. 16. Eliz. Dier 327. Lib. 4. f. 73. in Boroughes caſe. 21. E. 4. 6.

money is a sum in gross and collateral to the title of the land, that the Feoffor must tender the money to the person of the Feoffee according to the latter opinion, and it is not sufficient for him to tender it upon the land: otherwise it is of a rent that issueth out of the land. But if the condition of a Bond, or Feoffment be to deliver twenty quarters of Wheat, or twenty load of Timber, or such like, the Obligor or Feoffor, is not bound to carry the same about, and seek the Feoffee, but the Obligor or Feoffor before the day must go to the Feoffee, and know where he will appoint to receive it, and there it must be delivered. And so note a diversity between money, and things ponderous, or of great weight: If the condition of a Bond or feoffment be to make a feoffment, there it is sufficient (b) for him to tender it upon the land, because the state must pass by Livery.

Sect. 4. 2. 19. R. 2. Det. 178

(b) 2. E. 4. 9.

¶ *Deins le Roialm Dengleterre.* For if he be out of the Realm of England, he is not bound to seek him or to go out of the Realm unto him. And for that the Feoffee is the cause that the Feoffor cannot tender the money, the Feoffor shall enter into the land, as if he had duly tendered it according to the condition.

¶ *Un especial corporal service al seoffee.* This is a diversity between a Rent issuing out of Land, and a Corporal service issuing out of land, for it sufficeth (as hath been

si le seoffor soit sur le terre la prest a paier la money al seoffee a le jour assesse, & le seoffee adonque ne soit pas la, adonque le seoffor est assouth, & excuse de paymēt de l' mony, pur ceo que nul default est en luy. Mes il semble a ascuns que la ley est contrary, & que default est en luy. Car il est tenus d̄ querer le seoffee si soit adonque en ascun auter lieu deins le Roialme de Engleterr̄. Come si home soit oblige en un obligation de 20. li. sur condition endorse sur mesm̄ lobligat̄, que si paya a celuy a que lobligation est fait a tiel jour 10. li. adonque lobligation de 20. li. perdra sa force, & serra tenus pur nul, en cest cas il covient a celuy que fist obligation de querer celuy a que lobligation est fait, si soit deins Engleterre, & al jour assesse de tender a luy les dits 10. li. autrement il forfeitera la summe de 20. li. compryse deins l' obligation, &c. Et illint il semble en lauter cas, &c. Et coment q̄ ascuns ont dit, que le condition est dependant sur la terre, untore ceo ne prove q̄

have said that if the feoffor be upon the land there ready to pay the money to the feoffee at the day set, & the feoffee be not then there, then the feoffor is quit & excused of the payment of the money, for that no default is in him.

But it seemeth to some that the Law is contrary, and that default is in him, for he is bound to seek the feoffee if he be then in any other place within the Realm of *England*. As if a man be bound in an obligation of 20 pound upon condition endorsed upon the same obligation, that if he pay to him to whom the obligation is made at such a day 10 pound, then the obligation of 20 pound shall lose his force and be holden for nothing. In this case it behoveth him that made the obligation to seek him to whom the obligation is made, if he be in England, and at the day set to tender unto him the said 10 pound, otherwise he shall forfeit the sum of 20 pound comprised within the obligation, &c. And so it seemeth in the other case, &c. And albeit that some have

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le ſealans de le condition deſtre verforme, covient eſtre fait ſur la terr, &c. nient plus que ſi le condition fuit que le feoffor ſerra a tiel jour, &c. un eſpecial corporal ſervice al feoffee, nient noſmant le lieu ou tiel corporal ſervice ſerra fait, & tiel cas le feoffor doit faire tiel corporal ſervice al jour limitte al feoffee, en quelconq; lieu Dengleterre que le feoffee eſt, ſi voile aver advãtage ſi le condition, &c. Jcint il ſembl' en lauter cas. Et il ſemble a eux que il ſerroit pluis proprement dit, que leſtate de la terre eſt dependant ſur la condition, que dire, que le condition eſt dependant ſur la terre, &c. Sed quære, &c.

ſaid that the condition is depending upon the land, yet this proves not that the making of the condition to be performed, ought to be made upon the land, &c. no more than if the condition were that the feoffor at ſuch a day ſhall do ſome ſpecial corporal ſervice to the feoffee, not naming the place where ſuch corporal ſervice ſhall be done. In this caſe the feoffor ought to do ſuch corporal ſervice at the day limited to the feoffee in what place ſoever of England that the feoffee be, if he will have advantage of the condition, &c. ſo it ſeemeth in the other caſe. And it ſeems to them that it ſhall be more properly ſaid, that the eſtate of the land is depending upon the condition, then to ſay that the condition is depending upon the land, &c. *Sed quære, &c.*

ſaid) that the rent be tendered upon the land, out of which it iſſueth. But Homage or any other ſpecial Corporal ſervice muſt be done to the perſon of the Lord, and the Tenant ought by the law of convenience to ſeek him to whom the ſervice is to be done in any place within England. 21. E. 3. 20. 10. H. 6. 31. 27. E. 3. 34. 21. Aſſ. 13. 7 E. 4. 4. 21. E. 4. 17. 20 E Avowrie 113. 45. E. 3. 9. 46. E. 3. Barre. 216.

If a man be bound to pay twenty pound at any time during his life at a place certain, the Obligor cannot tender the money at the place when he will, for then the Obligee ſhould be bound to perpetual attendance, and therefore the obligor in reſpect of the uncertainty of the time muſt give the obligee notice that on ſuch a day at the place limited he will pay the money, & then the obligee muſt attend there to receive it: for if the obligor then & there tender the money, he ſhall ſave the penaltie of the Bond for ever. Mich. 22. & 23. Eliz. in Banke le Roy, which I my ſelf heard and obſerved. 19. Eliz. Dier 354 Lib. 8. fol. 92. in Frances caſe.

The ſame law it is if a man make a feoffment in fee upon condition, if the feoffor at any time during his life pay to the feoffee twenty pound at ſuch a place certain, that then, &c. In this caſe the Feoffor muſt give notice to the Feoffee when he will pay it, for without ſuch notice as is aforeſaid, the tender will not be ſufficient. But in both theſe caſes if at any time the Obligor or Feoffor meet the Obligee or Feoffee at the place he may tender the money. 18. Eliz. Dy. 354.

If A. be bound to B. with condition that C. ſhall enfeoffe D. on ſuch a day, C. muſt give notice to D. thereof, and requeſt him to be on the land at the day to receive the feoffment, and in that caſe he is bound to ſeek D. and to give him notice. 2. E. 4. 3. & 4. 1

¶ *De Tender*, or Tendre is a word common both to the Engliſh and French, in Latine Offerre, and in that ſenſe, and with that Latine word it is always uſed in the common Law, Vide Sect. 514. the tender of the half mark. And before Sect. 333, 334. 337.

Sect.

Sect. 341.

¶ Here the diverſity appeareth between a ſum in groſs, and a rent iſſuing out of the land, as hath been touched before.

¶ *Uncore il poet eſlier, s. de relinquiſher ſon entry ou de aver un Aſſiſe.*

Here it appeareth, that if the condition be broken for non payment of the rent, yet if the Feoffor bringeth an Aſſiſe for the rent due at that time, he ſhall never enter for the condition broken, becauſe he affirmeth the rent to have a continuance, and thereby waiveth the condition. And ſo it is if the rent had had a clauſe of Diſtreſs annexed unto it, if the Feoffor had diſtrained for the rent, for non payment whereof the condition was broken, he ſhould never enter for the condition broken, but he may receive that rent and acquit the ſame, and yet enter for the condition broken. But if he accept a rent due at a day after, he ſhall not enter for the condition broken, becauſe he thereby affirmeth the leaſe to have a continuance.

14. E. 3. Entre congeable 45. 14. Aſſ. 11. 45. Aſſ. 5. 6. H. 7. 3. 17. E. 3. 73. Pl. Com. 133. 22. H. 6. 57.

¶ Mes ſi feoffment ẽ fee ſoit fait reſervant al feoffor un annual rent, et pur ðfault de payment un re-entrie, &c. en ceſt caſe il ne beſoigne le tenant a tẽder le rent, quaunt il eſt arere, forſque ſur le fre pur ceo que ceo eſt Rent iſſuant hors de la Terre, que eſt Rent ſecke. Car ſi le Feoffor ſoit ſeiſie un foits ð ceſt rent, et puis il vient ſur la terre, &c. et le rent luy ſoit denie, il poet aver Aſſiſe de Novel Diſſeiſin, Car comment que il poet entr̃ p cauſe de le condition enfreint, &c. uncore il poet eſlier, ſ̃, de relinquiſher ſon entrie, ou ð aver un Aſſiſe, &c. Et iſſint eſt diverſitie quant al tender de le Rent que eſt iſſuant hors de la Terre, et del tender dauter ſumm en groſſe que ne paſſe iſſuant hors dalcun Terre.

BUT if a feoffment in fee be made, reſerving to the feoffor a yearly rent, & for default of payment a re-entry, &c. in this caſe the Tenant needeth not to tender the rent when it is behind, but upon the land, becauſe this is a Rent iſſuing out of the Land, which is a Rent Secke. For if the Feoffor be ſeiſed once of this Rent, and after he cometh upon the Land, &c. and the rent is denied him, he may have an Aſſiſe of *Novel Diſſeiſin*: for albeit he may enter by reaſon of the condition broken, &c. yet he may chuſe either to relinquiſh his entry, or to have an Aſſiſe, &c. And ſo there is a diverſity as to the tender of a rent which is iſſuing out of the land, & of the Tender of another ſum in Groſs, which is not iſſuing out of any Land.

Sect. 342.

¶ Et pur ceo il ſerra bone et ſure chaſe pur celuy que voet faire tiel feoffment en mortgage, de mitter un eſpecial lieu lou les deniers ſr̃ot payes, et le pluis eſpecial que eſt mis,

AND therefore it will be a good & ſure thing for him that will make ſuch feoffment in mortgage, to appoint an eſpecial place where the money ſhall be paid, and the more ſpecial that it be put, the

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le melior eſt pur le feoffor. Sicome A. infeoffe B. a aver a luy et a ſes heires, ſur tiel condition, Que ſi A. paya a B. en le Feaſt de Saint Michael Larchangel procheine a bener en Eſglíſe cathedral de Paules en Londres, deins quater heures procheine devant le heure d noone d meſm le feaſt, a le Rood loft de le Rood de le North dooze deins meſme le Eſglíſe, ou al tombe d S. Erkenwald, ou al huis de tiel Chappel, ou a tiel piller, deins meſme Leſglíſe que adonque bien liſt al avantdit A. et ſes heires dentrer, &c. en tiel caſe il ne beſoigne de querer le feoffee en auter lieu, ne deſtre en auter lieu, forſque en le lieu compile en lendenture, ne deſtre la pluis longe temps, q̃ le temps ſpecifie en meſm lendenture, pur tender ou payer le money a le feoffee, &c.

better it is for the Feoffor. As if A. infeoffe B. to have to him and to his heirs, upon ſuch condition, That if A. pay to B. on the Feaſt of Saint *Michael* the Arch-Angel next coming, in the Cathedral Church of Saint *Pauls* in London, within four hours next before the hour of Noon of the ſame Feaſt, at the Rood loft of the Rood of the North door, within the ſame Church, or at the Tombe of Saint *Erkenwald*, or at the door of ſuch a Chappel, or at ſuch a pillar within the ſame Church, that then it ſhall be lawful to the aforeſaid A. and his heirs to enter, &c. In this caſe he needeth not to ſeek the Feoffee in another place, nor to be in any other place, but in the place compriſed in the Indenture, nor to be there longer than the time ſpecified in the ſame Indenture, to tender or pay the money to the feoffee, &c.

HEre is good counſel and advice given, to ſet down in Conveyances every thing in certainty and particularity, for Certainty is the mother of Quietneſs and Repoſe, and uncertainty the cauſe of variance and contentions: and for obtaining of the one, and avoiding of the other, the beſt mean is in all aſſurances, to take counſel of learned and well experienced men, and not to truſt only without advice to a Preſident. For as the rule is concerning the ſtate of a mans body, Nullum medicamentum eſt idem omnibus, ſo in the ſtate and aſſurance of a mans Lands, Nullum exemplum eſt idem omnibus.

¶ *Al Tombe de Saint Erkenwald, &c.* This Erkenwald was a younger ſon of Anna King of the Eaſt Saxons, and was firſt Abbot of Cherſey in Surry which he had founded, and after Biſhop of London, a holy and devout man, and lieth buried in the South Ile, above the Quire in Saint Pauls Church, where the Tomb yet remaineth that Littleton ſpeaketh of in this place, he flouriſhed about the year of our Lord, 680.

The reſt due of this Section, and the (&c.) are evident.

Sect. 343.

¶ Item en tiel caſe lou le lieu de payment eſt limitte, le feoffee neſt oblige de receiver le payment en nul auter lieu forſque en meſme le lieu iſſint

ALſo in ſuch caſe where the place of payment is limited, the Feoffee is not bound to receive the payment in any other place but in the ſame place ſo limited.

¶ Hereby it appeareth that the place is but a Circumſtance. And therefore if the Obligee receiveth it at any other place, it is ſufficient, though he be not bound to receive it at any other place.

And

And so it is if the money be to be paid on such a Feast, yet if the money be tendred and received at any time before the day, it is sufficient.

limit. Mes uncore si il receivist le payment en auter lieu, ceo est assets bone, et auxy fort pur le feoffor, sicome le receit ust este en mesme le lieu limit, &c.

But yet if he do receive the payment in another place, this is good enough & as strong for the feoffor as if the receipt had been in the same place so limited, &c.

Sect. 344.

HEreupon are many diversities worthy of observation.

3.H.7.4.b.9.H 7.16. 11H.7.20.21.19.E.4.1.b 47.E.3.24. 22.E.4.24. 37.H.6.26.Li.9.fo.73. Peytoes case.

First, there is a diversity, when the condition is for payment of money: and when for the delivery of a Horse, a Robe, a Ring, or the like: for where it is for payment of money, there if the Feoffee or Obligee accept an Horse, &c. in satisfaction, this is good, but if the condition were for the delivery of a horse, or robe, there albeit the obligee or feoffee accept money or any other thing for the horse, &c. it is no performance of the condition. The like Law is, if the condition be to acknowledge a Recognisance of 20 pounds, &c. if the Obligee or Feoffee accept twenty pounds in satisfaction of the condition, it is not sufficient

12. H. 4. 23.

d Peytoes case ubi sup.

in Law, (d) but notwithstanding such acceptance, the condition is broken. And so it is of all other collateral conditions, though the Obligee or Feoffee himself accept it.

4.H.7.4. Dy.35.H.8.56. 27. H. 8. 1.

Secondly, in case when the condition is for payment of money, there is a diversity when the money is to be paid to the party, and when to an estranger: for when it is to be paid to an estranger, there if the stranger accept an horse or any collateral thing in satisfaction of the money, it is no performance of the Condition, because the Condition in that case is strictly to be performed. But if the condition be, That a stranger shall pay to the obligee or Feoffee a sum of money, there the Obligee or Feoffee may receive a horse, &c. in satisfaction.

Lib.5.f.17.Pinnels case.

Thirdly, Where the condition is for payment of twenty pounds, the Obligor or Feoffor cannot at the time appointed pay a lesser sum in satisfaction of the whole, because it is apparent

26.H 6.tit.Barre 37.

that a lesser sum of money cannot be a satisfaction of a greater. But if the Obligee or Feoffee do at the day receive part, and thereof make an acquittance under his Seal in full satisfaction of the whole, it is sufficient, by reason the Deed amounteth to an acquittance of the whole. If the Obligor or Lessor pay a lesser sum either before the day, or at another place than is limited by the Condition, and the Obligee or Feoffee receiveth it, this is a good satisfaction.

30 E.3.23.

Fourthly, Not only things in possession may be given in satisfaction, (whereof Littleton putteth his case,) but also if the Obligee or Feoffee accept a Statute or a Bond in satisfaction of the money, it is a good satisfaction.

11 R.2.tit.Barre 349.

If the Obligor or Feoffor be bound by condition to pay an hundred Marks at a certain day

ALso in the case of Feoffment in Morgage, if the Feoffor payeth to the Feoffee a Horse or a Cup of Silver, or a Ring of Gold, or any such other thing in full satisfaction of the money, and the other receiveth it, this is good enough, and as strong as if he had received the sum of money, though the Horse or the other thing were not of the twentieth part of the value of the sum of mony, because that the other hath accepted it in full satisfaction.

Item en tiel case de feoffment en morgage, si l'feoffor paya al feoffee un chival, ou banap dargent, ou un annel dor, ou auter tiel chose en plein satisfaction del money, & lauter ceo receivist č e assets bonē & auxy fort sicome il ust receive la summe del money, coment que l'chival, ou lauf chose ne fuit de vintisme part del value d sum de le money, pur ceo que lauter avoit ceo accept en pleine satisfaction.

day, and at the day the parties do account together, and for that the Feoffee or Obligee did owe twenty pound to the Obligor or Feoffor, that sum is allowed, and the residue of the hundred Marks paid, this is a good satisfaction, and yet the twenty pound was a Chose in action, and no payment was made thereof, but by way of retainer or discharge. 37.H.6.26. 46.E.3. 34.H.6.17. 12.H.8.1.

¶ *En pleine satisfaction.* Nota, In satisfaction, and in full satisfaction is all one.

Sect. 345.

ITem ſi home enfeoffa un auter ſur condition, que il et ſes heires rendront a un eſtrange home et a ſes heires un annuel rent de 20. s. &c. et ſi il ou ſes heires failont de payment de ceo, que adonques bien lirroit al feoffor et a ſes heires de enter, ceo eſt bon condition, et uncore en ceſt cas, coment que tiel annual payment eſt appelle en lendenture un annual rent, ceo neſt pas proprement rent. Car il ſerroit rent, il codient eſtre Rent ſervice, ou rent charge, ou rent ſecke, et il neſt aſcun de eux. Car ſi leſtrange ſuit ſeiſie de ceo, et puis il ſuit a luy denie, il navera unque aſſiſe de ceo, pur ceo que il neſt pas iſſuant hors daſcun tenements, et ſimt leſtrange nad aſcun remedie ſi tiel annual rent ſoit adverere en ceſt cas, mes que le feoffor ou ſes heires point entrer, &c. et uncore ſi le feoffor ou ſes

ALſo if a man infeoffe another upon Condition, that he and his heirs ſhall render to a ſtranger and to his heirs a yearly rent of 20 ſhillings, &c. and if he or his heirs fail of payment thereof, that then it ſhall be lawful to the Feoffor and his heirs to enter, this is a good Condition, and yet in this caſe, albeit ſuch annual payment be called in the Indenture a yearly rent, this is not properly a rent. For if it ſhould be a rent, it muſt be Rent Service, Rent Charge, or a Rent Secke, and it is not any of theſe. For if the ſtranger were ſeiſed of this, and after it were denied him, he ſhall never have an Aſſiſe of this, becauſe that it is not iſſuing out of any Tenements, and ſo the ſtranger hath not any remedy if ſuch yearly rent be behind in this caſe, but that the Feoffor or his heirs may enter, &c. And yet if the Feoffor or his heirs enter for default of pay-

¶ *Rendront a un eſtrange home un annuel rent, &c.*

This reſervation is meerly void (a) for the reaſons hereafter in this Section alledged by Littleton, and alſo for that no Eſtate moveth from the ſtranger, and that he is not party to the Deed. (a) Lib.8.fol.70.71.

And albeit it be a void reſervation, and can be no rent, and the words of the Condition be, that if the feoffee or his heirs fail of payment of it, (that is, of the annual rent) that then, &c. yet it appeareth that the Condition is good, and annual rent ſhall be taken for an annual ſum of money in groſs, and not in the proper ſignification thereof, viz. to be a rent iſſuing out of Land, which is to be obſerved, that words in a Condition ſhall be taken out of their proper ſenſe, Ut res magis valeat quam pereat, and ſo in like caſes it is holden (b) in our Books. (b) 6.E.2.entr.cong.55. recipere. 8. Aſſ 34. revertere.

But if A. be ſeiſed of certain lands, and A. and B. join in a Feoffment in fee reſerving a rent to them both and their heirs, and the Feoffee grant that it ſhall be lawful for them and their heirs to diſtrein for the

the rent, this is a good grant of a rent to them both, because he is party to the Deed, and the clause of distress is a grant of the rent to A. and B. as it appeareth before in the Chapter of rents. But if B. had been a stranger to the Deed, then B. had taken nothing. And upon this diversity are all the Books (c) which prima facie seem to vary, reconciled.

(c) 18.E.2.Ass.381. 26.H.8.2. 13.E.2.feoffments & faits 108. 31. Ass. p. 31.

¶ *Car sil serra rent, il covient estre rent service, rent charge, ou rent secke, et il nest nul de eux.* This is a good Logical argument à divisione, & argumentum à divisione est fortissimum in lege. (d) Littleton useth this argument elsewhere, where see more of this matter.

(d) Vide Sect. 381.

heires entront pur default de payment, adonque tiel rent est ale a touts jours. Et issint tiel rent nest forsqz un peine assesse a le tenant et les heirs, que sils ne voilent payer ceo solõque la forme del Indenture, ils perdront lour terre per lentrie del feoffor ou les heires pur default de payment. Et en cest cas il semble que le feoffee et les heirs doyent querer le estranger et heires sils sont deins Engleterre, pur ceo que nul lieu est limit lou le payment serra fait, & pur ceo que tiel rent nest pas issuant hors dascun terre, &c.

ment: then such rent is taken away for ever. And so such a rent is but as a pain set upon the tenant and his heirs, that if they will not pay this according to the form of the Indenture, they shall lose their land by the entry of the Feoffor or his heirs for default of payment. And in this case it seemeth that the Feoffee and his heirs ought to seek the stranger and his heirs if they be within *England*, because there is no place limited where the payment shall be made, and for that such rent is not issuing out of any land, &c.

¶ *Pur default de payment.* Note here seeing it is but a sum in gross, there need no demand of the rent, for Littleton here saith, that the Feoffee ought to seek the person of the stranger to pay him the sum of money, because it is a sum in gross and not issuing out of the Land.

Sect. 346.

¶ *A le feoffor, donor, &c. ou a lour heires.* Hereby it may seem that if a man make a Feoffment, Gift, or Lease, that (omitting himself) he may reserve a Rent to his heirs. But Littleton is not so to be understood, his meaning is, that either the Feoffor, &c. may reserve the Rent to himself only, or to himself and his heirs. And yet it is holden (e) in our Books that a man may make a feoffment in fee reserving a Rent of forty shillings to the feoffor for term of his life, and

(e) 5.E.3.27.28.

¶ Et hic nota deux choses, Un est, que nul rent (qz proprement est dit rent) poit estre reserve sur ascun feoffment, done, ou leas forsque tantsolement al feoffor, ou al donor, ou al lessor, ou a lour heires, & en nul maner il poit estre reserve a ascun estrãge

And here note two things, one is, That no rent (which is properly said a Rent) may be reserved upon any feoffment, gift, or lease, but only to the Feoffor, or to the Donor, or to the Lessor, or to their heirs, and in no manner it may be reserved to any strange person. But if

person

perſon. Mes ſi deux joyntenants ſont un leas per fait endent, reſervant a un de eux un certain annuall rent, ceo eſt aſſets bon a luy a q̄ le rent eſt reſerve, pur ceo q̄ il eſt p̄vy a le leaſe e nemy eſtrange a le leas, &c.

two Jointenants make a Leaſe by Deed indented, reſerving to one of them a certain yearly rent, this is good enough to him to whom the Rent is reſerved, for that he is privy to the Leaſe and not a ſtranger to the Leaſe, &c.

after his deceaſe a pound of Cumyne to his heirs, that this is good.

If a man make a Feoffment in fee reſerving a Rent to him or his heirs, it is good (f) to him for term of his life, and void to his heir.

(f) Lib. 5. fol. 111. Mallories caſe.

¶ *Mes ſi 2 Joyntenants ſont un leaſe per fait indent, &c.*

This caſe being by Deed indented, is evident, and it hath been touched before, but

5. E. 4. 4. a. 27. H. 8. 16. Vide Sect. 58.

If that two Joyntenants without a Deed indented make a leaſe for life, reſerving a rent to one of them, it ſhall enure to them both in reſpect of the joint reverſion. And ſo it is of a ſurrender to one of them, it ſhall enure to them both.

If two Jointenants, the one for life, and the other in fee, join in a leaſe for life, or a gift in tail reſerving a rent, the rent ſhall enure to them both, for if the particular eſtate determine, they ſhall be jointenants again in poſſeſſion. But if tenant for life, and he in the reverſion join in a leaſe for life, or a gift in tail by Deed reſerving a rent, this ſhall enure to the Tenant for life only, during his life, and after to him in the reverſion, for every one grants that which he may lawfully grant, and if at the common law they had made a feoffment in fee generally, the feoffee ſhould have holden of the Tenant for life during his life, and after of him in reverſion, and ſo it was holden (g) in the Kings Bench.

Vide Sect. 58.

(g) Mich. 36. & 37. Eliz.

Sect. 347.

¶ Le ſecond choſe eſt que nul entry, ou re-entrie (que eſt tout un) poit eſtre reſerve, ne done a aſcun perſon forſq̄ tantſolement al feoffor, ou al donor, ou al leſſor, ou a lour heires, e tiel re-entrie ne poyt eſtre grant, a un auter perſon. Car ſi home leſſa terre a un auter pur terme de vie per Indenture, rendant al Leſſor, et a ſes heires, certaine rent, e pur default de payment un re-entry, &c. ſi apres le leſſor per un fait grant le reverſion de la terre a un auter en fee, et le tenant a terme de vie attorna, &c. ſi le rent a-

THE ſecond thing is, that no entry nor re-entry (which is all one) may be reſerved or given to any perſon, but only to the Feoffor, or to the Donor, or to the Leſſor, or to their heirs. And ſuch re-entry cannot be given to any other perſon. For if a man letteth land to another for term of life by indenture, rendring to the Leſſor and to his heirs a certain rent, and for default of payment, a re-entry, &c. If afterward the leſſor by a Deed granteth the reverſion of the land to another in fee, and the Tenant for term of life, attorn, &c. if the rent be

¶ *Ove nul entrie, &c.*

Here Littleton reciteth one of the Maxims of the Common law, and the reaſon hereof is, for avoiding of maintenance, ſuppreſſion of right, and ſtirring up of ſuits; and therefore nothing in action, entry, or re-entry can be granted over; for ſo under colour thereof, pretended titles might be granted to great men, whereby right might be trodden down, and the weak oppreſſed, which the common Law forbideth, as men to grant before they be in poſſeſſion.

¶ *Pur default*

fault de payment un re-entrie, &c. Hereupon is to be collected divers diversities, first between a condition that requireth a re-entry, and a limitation that Ipso facto determineth the estate without any entry. Of this first sort no stranger, as Littleton saith, shall take any advantage, as hath been said. But of limitations it is otherwise. As if a man make a Lease Quousque, that is, until I. S. come from Rome, the Lessor grant the reversion over to a stranger. I. S. comes from Rome, the grantee shall take advantage of it and enter, because the estate by the express limitation was determined.

pres soit averere, le grantee de le reversion poit distreiner pur le rent, pur ceo que le rent est incident a le reversion, mes il ne poit entrer en la tre, e ouste le tenant, si come l' lessor puissoit, ou ses heires, si le reversion ust este continue en eux, &c. Et en cest case lentrie est tolle a touts temps. Car le grantee de le reversion ne poit entrer, Causa qua supra. Et le lessor, ne ses heires ne popent enter. Car si le lessor puissoit enr, donques il covient que il serroit en son primer estate, &c. e ceo ne poit estre, pur ceo que il ad alien de luy le reversion.

after behind, the grantee of a reversion may distrein for the rent, because that the rent is incident to the reversion, but he may not enter into the land, and oust the tenant, as the Lessor might have done or his heirs, if the reversion had been continued in them, &c. And in this case the entry is taken away for ever, for the grantee of the reversion cannot enter, *Cause qua supra.* And the lessor nor his heirs cannot enter, for if the lessor might enter, then he ought to be in his former estate &c. And this may not be, because he hath aliened from him the reversion.

Register 246. Pl. Com. 27 24 E. 3. Formedon 68. F.N.B. 201. Lib. 10. fo. 36. Mary Portingtons case.

So it is if a man make a Lease to a woman Quamdiu casta vixerit, or if a man make a lease for life to a widow, Si tam diu in pura viduitate viveret. So it is if a man make a lease for a 100 years if the lessee live so long, the lessor grants over the reversion, the lessee dies, the grantee may enter, Causa qua supra.

2. Another diversity is between a condition annexed to a Freehold, and a Condition annexed to a lease for years.

Brooke tit. condition in Abh. 11. H. 7. Loppinion de Bromley 10. E. 52. 10 Ass. Pl. 24. Pl. Com. 36 11. H. 7 17. 19. R. 2. Done 10.

For if a man make a gift in tail or a lease for life upon condition, that if the Donee or Lessee goeth not to Rome before such a day, the gift or lease shall cease or be void, the grantees of the reversion shall never take advantage of this condition, because the estate cannot cease before an entry, but if the lease had been but for years, there the grantee should have taken advantage of the like condition, because the lease for years Ipso facto by the breach of the condition without any entry was void, for a lease for years may begin without ceremony, and so may end without ceremony: but an estate of freehold cannot begin nor end without ceremony. And of a void thing an estranger may take benefit, but not of a voidable estate by entry.

Pl. Com. 313. 314. in Scolasticaes case.

¶ *Al feoffor, ou al donor, &c. ou a lour heires, &c.* Here is to be observed a diversity between a reservation of a rent and a re-entry, for (as it hath been said) a rent cannot be reserved to the heir of the Feoffor, but the heir may take advantage of a condition, which the feoffor could never do. As if I infeoffee another of an acre of ground upon condition that if mine heir pay to the feoffee, &c. 20 shillings, that he and his heirs shall re-enter, this condition is good, and if after my decease my heir pay the 20 shillings, he shall re-enter, for he is privy in blood, and enjoy the land as heir to me.

15. E. 4. 14. a.

¶ *Forsque tantsolement al feoffor, &c. ou a lour heires.* Our Author speaketh here of natural persons for an example, for if a Bishop, Archdeacon, Parson, Prebend, or any other body politick or corporate, Ecclesiastical or Temporal make a lease, &c. upon condition, his successor may enter for the condition broken, for they are privy in right.

21. H. 7. 18. a.

And so if a man have a lease for years, and demise or grant the same upon condition, &c. and die, his Executors or Administrators shall enter for the condition broken, for they are privy in right, and represent the person of the dead.

(y) If

(y) Ie Cestuy que use had made a lease for years, &c. upon Condition, the Feoffees should not enter for the Condition broken, for they are privy in estate, but not privy in blood. (y) 17. H. 8. 1.

Another diversity is in case of a Lease for years, where the condition is that the Lease shall cease or be void, as is aforesaid, and where the condition is, that the Lessor shall reenter, for there the Grantee as Littleton saith, shall never take benefit of the condition.

And it is to be observed that where the estate or Lease is Ipso facto void by the condition or limitation, no acceptance of the rent after can make it to have a continuance: Otherwise it is of an estate or lease voidable by entry. Pl. Com. Brownings case 136.

Another diversity is between conditions in Deed, whereof sufficient hath been said before, and conditions in Law. As if a man make a lease for life, there is a condition in Law annexed unto it, that if the Lessee doth make a greater estate, &c. that then the Lessor may enter. Of this and the like conditions in Law, which do give an entry to the Lessor, the Lessor himself and his heirs shall not only take benefit of it, but also his Assignee and the Lord by Escheat, every one for the condition in Law broken in their own time. Another diversity there is between the judgment of the Common law, whereof Littleton wrote, and the Law at this day by force of the statute (z) of 32. H. 8. cap. 34. (a) For by the Common Law no Grantee or Assignee of the reversion could (as hath been said) take advantage of a re-entry by force of any Condition. For at the Common law if a man had made a lease for life reserving a rent, &c. and if the rent be behind a re-entry, and the Lessor grant the reversion over, the grantee should take no benefit of the condition for the cause before rehearsed. But now by the said Statute of 32. H. 8. the Grantee may take advantage thereof, and upon demand of the rent, and non-payment he may re-enter. By which act it is provided that as well every person which shall have any grant of the King of any reversion, &c. of any lands, &c. which pertained to Monasteries, &c. as also all other persons being Grantees or Assignees shall have like advantage against the lessees, &c. by entry for non-payment of the rent, or for doing of Waste, or other forfeiture, &c. as the said Lessors or Grantors themselves ought or might have had. Upon this Act divers resolutions and judgments have been given, which are necessary to be known. (z) 32. H. 8. cap. 34. le preamble. (a) 26. H. 6. tit. ent. cog. 49.

1. That the said Statute is general, viz. (b) that the Grantee of the reversion of every common person as well as of the King shall take advantage of conditions. (b) Pl. Com. Hill. & Grange's case. 175 176. M. 10 & 11. Eliz 180. Dier Ibid.

2. That the Statute doth extend to Grants made by the Successors of the King albeit the King be only named in the act.

3. That where the Statute speaketh of Lessees, that the same doth not extend to gifts in tail. 14. Eliz. Dyer 309. Winters case.

4. That where the Statute speaks of Grantees and Assignees of the reversion, (d) that an Assignee of part of the state of the reversion may take advantage of the Condition. As if Lessee for life be, &c. and the reversion is granted for life, &c. So if lessee for years, &c. be, and the reversion is granted for years, the grantee for years shall take benefit of the Condition in respect of this word (Executors) in the act. (d) Pl. Com. Kidwellyes case. 69. Vid. Dyer Mich. 14. & 15. Eliz. 309. Vid 7 E. 3 54. Simile adjudged in Communi Banco in the Lord Diers time. P. 17 Eliz. Mich. 14. & 15. Eliz Dier 309. adjudge Winters case.

5. That a grantee of part of the reversion, shall not (e) take advantage of the condition, as if the lease be of three acres reserving a rent upon condition, and the reversion is granted of two acres, the rent shall be apportioned by the act of the parties, but the condition is destroyed, for that it is entire and against common right. (e) Lib. 5 fo. 54. Knights case. Winters case ubi supra.

6. That in the Kings case the condition in that case is not destroyed but remains still in the King. Knights case ubi supra.

7. By act in law a condition may be apportioned in the case of a common person, as if a lease for years be made of two acres, one of the nature of Burrough English, the other at the Common law, and the lessor having issue two sons, dieth, each of them shall enter for the condition broken, and likewise a condition shall be apportioned by the act and wrong of the lessee, as hath been said in the Chapter of rents. Lib. 4. fo. 120. Dumpers case.

8. If a lease for life be made, reserving a rent upon condition, &c. the lessor levies a fine of the reversion, he is grantee or assignee of the reversion, but without attornment he shall not take advantage of the condition, for the makers of the Statute intended to have all necessary incidents observed, otherwise it might be mischievous to the lessee. Resolved in Dukes case Pasch 20. Eliz. in Communi Banco. Mallories case lib. 5. 112. b.

9. There is a diversity between a condition that is compulsory, and a power of revocation that is voluntary: for a man that hath a power of revocation, may by his own act extinguish his power of revocation in part, as by levying of a fine of part, and yet the power shall remain for the rest due, because it is in nature of a limitation, and not of a condition, and so it was resolved (b) in the Earl of Shrewsburies case in the Court of Wards, Pasch. 39. Eliz. and Mich 40 & 41. Eliz. (b) 14. Eliz. Dyer 39.

10. If the lessor bargain and sell the reversion by Deed indented and inrolled, the Bargainee is not in the Per by the Bargainor, and yet he is an assignee within the Statute.

So

So if the Lessor grant the reversion in fee to the use of A. and his heirs, A. is a sufficient Assignee within the Statute, because he comes in by the act and limitation of the party, albeit he is in the Post, and the words of the Statute be, To or By, and they be Assignees to him, although they be not by him: but such as come in meerly by act in law, as the Lord of the Villein, the Lord by Escheat, the Lord that entreth or claimeth for Mortmain, or the like, shall not take benefit of this Statute.

Lib. 5 fo. 113. Mallories case.

11. If the lessor in the case before bargain and sell the reversion by Deed indented and inrolled, or if the lessor make a feoffment in fee, and the lessee re-enter, the grantee or feoffee shall not take any advantage of any Condition, without making notice to the Lessee.

Lib. 8 fo. 92. Frances case

And so was it resolved in Winters case. Mich. 14. & 15. Eliz. in Communi Banco, and oftentimes since. Vid. Dyer 309.

12. Albeit the whole words of the Statute be, for non-payment of the rent, or for doing of waste, or other forfeiture, yet the Grantees or Assignees shall not take benefit of every forfeiture, by force of a condition, but only of such conditions as either are incident to the reversion, as rent, or for the benefit of the state, as for not doing of waste, for keeping the houses in reparations, for making of Fences, scouring of Ditches, for preserving of woods, or such like, and not for the payment of any sum in gross, delivery of Corn, Wood, or the like, so as other forfeiture shall be taken for other forfeitures like to those examples which were there put, (videlicet) of payment of Rent, and not doing of waste, which are for the benefit of the Reversion.

Sect. 348.

¶ *AL Seigniour per voy de Escheat, &c.*

Note here it appeareth, That the Lord by Escheat shall distrein for the Rent, and yet the Rent was reserved to the Lessor and his heirs, but both Assignees in Deed, and Assignees in Law shal have the rent, because the Rent being reserved of inheritance to him and his heirs, is incident to the reversion, & goeth with the same. But if the Rent were reserved to him and his Assigns, & the Lessor assigned over the reversion, & dyeth, the assignee shall not have the rent after his decease, because the rent determined by his death, for that it was not reserved to him, his heirs and assigns.

19. E. 3. Reseeit 14.

¶ *Mes il ne poet entrer en la terre per force del Condition, &c.*

Hereby it appeareth that at the Common law neither assigns in deed, nor assigns in law could have taken the benefit of either entry or re-entry, by force of a condition.

¶ *Item si soyt Seignior et tenant, & le tenāt fait un tiel lease pur terme de vie. rendant a Lessor et a ses hēes tiel annual rēt, & pur default de payment un re-entrie, &c. si apres le lessor morust sans heire durant la vie le Tenant a terme de vie, per que le reversion devient al Seignior per voy Escheat, et puis le rent [redacted] le Tenant a terme de vie soit adarere, le seignior poet destreiner l' Tenant pur le Rent arere: mes il ne poet entrer en la terre per force del condition, &c. pur ceo que il nest pas heire al Lessor, &c.*

ALso if Lord and Tenant be, and the Tenant make a Lease for term of life, rendring to the Lessor and his heirs such an annual Rent, and for default of payment, a re-entry, &c. if after the Lessor dieth without heir during the life of the Tenant for life, whereby the Reversion cometh to the Lord by way of Escheat, and after the rent of the tenant for life is behind, the Lord may distrein the tenant for the rent behind, but he may not enter into the land by force of the condition &c. because that he is not heir to the Lessor, &c.

f. 21. H. 7. 18. 17. Ass. 20. 19. E. 3. Gard. 113. 114. 18. Ass. pl. 18. Lib 7 fol. 7 The Earl of Bedfords case.

The Gardian in chivalry or in Socage shall in the right of the heir take benefit of a Condition by entry or re-entry, by the Common Law, and so it is here implyed.

Sect.

Sect. 349.

¶ Item ſi terre ſoit graunt a un home pur terme de deux ans ſur tiel condition, que il payeroit al grantor deins les dits deux ans 40. Markes, adonques il averoit la terre a luy et a ſes heires, &c. en ceſt caſe ſi le Grantee enter per force de le Grant ſans alcun liverie de ſeiſin fait a luy per le Grantor, et puis il paya al Grantor les 40. Markes deins les deux ans, uncore il nad riens en la terre forſque pur terme de deux ans, pur ceo que nul liverie de Seiſin a luy fuit fait al commencement. Car il averoit Franktenement et fee en ceſt caſe, pur ceo que il ad performe le condition, donque il averoit Franktenement per force del prime graunt, lou nul liverie de Seiſin de ceo fuit fait, que ſerroit inconvenient, &c. Mes ſi le Grantor uſt fait liverie de ſeiſin al Grantee per force de la Grant, donque averoit le Grantee le Franktenement et le fee ſur meſme le condition.

ALſo if Land be granted to a man for term of two years, upon ſuch condition, That if he ſhall pay to the Grantor within the ſaid two years forty Marks, then he ſhall have the Land to him and to his Heirs, &c. In this caſe if the Grantee enter by force of the Grant, without any livery of Seiſin made unto him by the Grantor, and after he payeth the Grantor the forty Marks within the two years, yet he hath nothing in the Land but for term of two years, becauſe no livery of Seiſin was made unto him at the beginning: for if he ſhould have a freehold and fee in this caſe, becauſe he hath performed the condition, then he ſhould have a freehold by force of the firſt Grant, where no Livery of Seiſin was made of this, which would be inconvenient, &c. but if the Grantor had made Livery of Seiſin to the Grantee, by force of the grant, then ſhould the Grantee have the Freehold and the Fee upon the ſame condition.

¶ Here ſix things are to be obſerved: Firſt Littleton here putteth an example of a condition precedent. Secondly, That ſuch a Condition which createth an eſtate may be made by Parol without Deed. Thirdly, That Livery of Seiſin in this caſe muſt be made before the Leſſee enter, (as Littleton here ſaith at the beginning) for after his entry Vide Sect. 60. livery made to him that is in poſſeſſion is void, as hath been ſaid. Fourthly, That if no Livery of Seiſin be made, that no Fee ſimple doth paſs, although the money be paid. Fifthly, That it is inconvenient that the Fee ſimple ſhould paſs in this caſe without Livery of Seiſin. Sixthly, That Argumentum ab inconvenienti, is forcible in Law, as often hath been and ſhall be obſerved. See more of this kind of condition in the Section next following.

¶ *Et a ſes heires, &c.* Here (&c.) implieth an eſtate in taile, or a Leaſe for life.

Sect.

Sect. 350.

'ORe il ad fee simple conditional, &c. The like is of an Estate in taile or for life. Many are of opinion against Littleton in this case, and their reason is, because the Fee simple is to commence upon a condition precedent, and therefore cannot pass until the condition be performed: And that here Littleton of a Condition precedent doth (before the performance thereof) make it subsequent: and for proof of their opinion they abouch many successions of authorities that no Fee simple should pass before the Condition performed.

31. E. 1. tit. Feoffments & Faits 119. A. letteth a Mannor to B. for term of twenty years, and the Deed would, That after the term of twenty years that B. and his heirs should hold the said Mannor for ever by twelve pounds rent, A. taketh a Wife and dyeth before the term be past, the Wife of A. demands Dower. And there Wayland chief Justice saith, That the Fee and the franktenement doth repose in the person of the Lessor until the term be past, for before that, the condition is not performed, for if the Lessor had alened the land before the end of the term, B. should not recover by a Writ of Assise, and by the death of the Lessor the chief Lord should have had the wardship

ITem ũ terre soyt grant a un home pur ẽme de 5. ans, ꝙ condition, que ũl pay al Grantor deins les deux primer ans 40. Marks, que adonque il averoit fee, ou autrement forsque pur terme de les 5. ans, et liverie de Seisin est fait a luy per force de le graunt, ore il ad fee simple conditionel, &c. Et ũ en ceo case le Grauntee ne paia my al Grantor les 40. Marks deins les primers deux ans, donques immediate apres mesmes les deux ans passes, le fee et le franktenement est, et serra adjudge en le Grantor, pur ceo que le Grantor ne poet apres les dits deux ans maintenant enter sur le Grauntee, pur ceo que le Grantee ad uncore titl' per trois ans daver. et occupier la terre per force de in l' grant. Et illũt pur ceo que le condition ỏl part le Grantee est enfreint, et le Grauntor ne poet entrer, la Ley mitteza l' fee et le franktenement en le Grantor. Car ũ le Grantee ẽ cest case fait wast, donques apres le enfreinder de le condition, &c. et apres les

ALso if Land be granted to a man for term of five years, upon condition, That if he pay to the Grantor within the two first years forty Marks, that then he shall have fee, or otherwise but for term of the five years, and livery of Seisin is made to him by force of the Grant, now he hath a fee simple conditional, &c. And if in this case the Grantee do not pay to the Grantor the forty Marks within the first two years, then immediately after the said two years past, the fee and the freehold is and shall be adjudged in the Grantor, because that the Grantor cannot after the said two years presently enter upon the Grantee, for that the Grantee hath yet title by three years to have and occupy the Land by force of the same Grant. And so because that the condition of the part of the Grantee is broken, and the Grantor cannot enter, the Law will put the fee and the Freehold in the Grantor: for if the Grantee in this case makes Waste, then after the breach of the condition, &c. and after the two

deux

deux ans, le grantor avera son briefe de wast. Et ceo est bone proofe adonque que le reversion est en luy, &c.

years, the Grantor shall have his Writ of Waste. And this is a good proof then, that the reversion is in him, &c.

of the heir of the lessor, and by judgment the wife recovered Dower, for the termor could not have fee, all which be the words of that Book.

12. E. 2. tit. voucher 265. I. letteth lands to B. for eight years, and if the lessor pay not a hundred Marks to the

12.E.2.tit.voucher 265.

Lessee at the end of the term, that then he shall have fee: by the non-payment of the money. The fee and frank tenement accrueth to him, and before, the lessee cannot be impleaded in a Precipe, neither shall he vouch.

(x) 7. E. 3. 10. I. letteth certain lands to N. for the term of ten years, rendring a hundred shillings by the year to him and his heirs, and granted by deed that if he held the lands over to him and his heirs, that he should render by the year twenty pounds, the Lessor during the term brought an action of debt for the rent, and there Herle Chief Justice of the Common Pleas giveth the rule, that during the term the lessee had but for years, and therefore the Action of Debt maintenable.

(x) 7.E.3.10. Pl.Com. Say, case 272.

(y) 44. E. 3. tit. attaint. 22. and 43. Ass. p. 41. D. and A. infeoffe the two plaintifs in the Assise, they let those lands to S. for term of nine years upon condition, that if the plaintif in the assise pay a hundred shillings to S. during the term, that S. shall have it but for nine years, and if they pay it not, that S. shall have fee. S. continueth his estate by one year, and after granteth his estate to one H. which H. continueth his estate by two years, and granted the reuersion of the term to R. and within the term of nine years the plaintifs in the Assise pay the hundred shillings to S. R. continueth his possession after the term, and infeoffeth D. which infeoffeth the Lord Furnival, against whom and others without any claim or entry made by the plaintifs, after the nine years ended he brought his assise, and after adjournment recovered.

(y) 44.E.3.tit. attaint, 22.43. Ass. p. 41.

(z) 10.E.3.39.& 40. R. doth let certain lands to I. for term of twelve years, and in surety of his term he maketh a Charter of the fee upon condition, that if he be disturbed within the term, that he cannot hold the lands until the end of the term, that then he shall hold the lands to him and his heirs for ever, and seisin was delivered upon the one Charter and the other, R. within the term plowed and sowed the land, and took the profits against the will of I. and I. upon this disturbance had fee and recovered in assise.

(z) 10.E.3.39.40.10.Ass. 15. tit. Ass. 161. Pl. Com. Brownings case 135.

6.R.2.tit. Quid juris clamat 20. If a lease be made for a term upon condition, if the lessee pay a certain sum within the term, that then he shall have fee, if he pay the money he shall have the fee, but if before the day of payment the lessor levieth a fine to another, the lessee ought to attorn by protestation, and if he pay the money, the Conusee shall have it, and the Conusee shall have the rent reserved until the day of payment, and if land be letten for term of years upon condition, that if the lessee be ousted within the term by the lessor, that he shall have fee, if he be ousted, he shall have fee by the condition, and notwithstanding he shall not have any assise, but he must have possession after the ouster, and of this he shall have an assise.

6.R.2. tit. quid juris clamat. 20.

And generally the Books (a) are cited that make a diversity between a condition precedent and a condition subsequent.

(a) 15.H.7.1.2. 14.H.8.18.20.3.H.6.6.b

And lastly, they cite Dier, (b) 10.Eliz.281. and in Say and Fullers case, Pl. Com. 272. the opinions of Dier and Browne.

(b) Dyer 10. Eliz. 281. Pl. Com. 272.

Notwithstanding all this there are those that defend the opinion of Littleton, both by reason and authority. By reason, for that by the rule of law a livery of seisin must pass a present Freehold to some person, and cannot give a freehold in futuro, as it must do in this case, if after livery of seisin made the Freehold and inheritance should not pass presently, but expect until the condition be performed, and therefore if a lease for years be made to begin at Michaelmas, the remainder over to another in fee, if the lessor make livery of seisin before Michaelmas, the livery is void, because if it should work at all it must take effect presently and cannot expect.

vid. Litt. in the Chapter of Tenants for years.

Secondly, they say that when the lessor makes livery to the lessee, it cannot stand with any reason that against his own livery of seisin a Freehold should remain in the lessor, seeing there is a person able to take it. But if a man by Deed make a lease for years the remainder to the right heirs of I. S. and the lessor make livery to the lessee secundum formam chartæ, this livery is void, because during the life of I. S. his right heir cannot take (for nemo est hæres viventis) and in that case the freehold shall not remain in the lessor, and expect the death of I. S. during the term, for albeit I. S. die during the term, yet the remainder is void, because a livery of seisin cannot expect.

And they ſay further that ſeeing all the Books aforeſaid prove that ſuch a condition is good, and that the livery made to the Leſſee is effectual, by conſequence the Freehold and Inheritance muſt paſs preſently, or not at all.

And it is not rare, ſay they, in our Books that words ſhall be tranſpoſed and marſhalled ſo as the Feoffment or grant may take effect. (b) As if a man in the month of February make a leaſe for years reſerving a yearly rent payable at the Feaſts of Saint Michael the Archangel, and the Annunciation of our Lady, during the term, the law (in this caſe of reſervation) ſhall make tranſpoſition of the Feaſts, viz. at the Feaſts of the Annunciation, and of Saint Michael the Archangel, that the rent may be paid yearly during the term. And ſo it is (c) in caſe of a grant of an Annuity. And further they take a diverſity in this caſe between a leaſe for life, and a leaſe for years. For in caſe of a leaſe for life with ſuch a condition to have fee, they agree that the fee ſimple paſſeth not before the performance of the condition, for that the livery may preſently work upon the Freehold: but otherwiſe it is in the caſe of a leaſe for years. Alſo they take a diverſity between Inheritances that lie in grant and Inheritances that lie in livery. For they agree that if a man grant an Advoulon for years upon condition, that if the grantee pay twenty ſhillings, &c. within the term, that then he ſhall have fee, the grantee ſhall not have fee until the condition be performed. Et ſic de ſimilibus. But otherwiſe it is where livery of ſeiſin is requiſite, and therefore if the king make ſuch a leaſe for years, upon ſuch a condition, the fee ſimple ſhall not paſs preſently becauſe in that caſe no livery is made.

(b) Hill & Granges Pl. Com. 171.

(c) 10. E. 3. Seignior Staffords caſe, lib. 8. fol. 74. Pl. Com. Nichols caſe 487.

They alſo make ſeveral anſwers to the authorities before cited. For as to the caſe in 31. E. 1. they ſay that either the caſe is miſreported, or elſe the Law is againſt the judgment, for the caſe is but this, that a man make a leaſe of a manor to B. for twenty years, and that after the twenty years B. ſhall hold the Manor to him and his heirs by 12 pound rent and (as it muſt be intended) maketh livery of ſeiſin, in this caſe it is clear (ſay they) that B. hath a fee ſimple Maintenant, for there is no condition precedent in the caſe.

As for the caſe in 12. E. 2. the caſe (as it is put in the Book) is that John de Marre made a Charter to John de Burford of Fee ſimple, and the ſame day it was covenanted between them that John de Burford ſhould hold the ſame tenements for eight years, and if he did not pay a hundred Marks at the end of the term, that the land ſhall remain to John de Burford, and his heirs. In which caſe, ſay they, there is direct repugnancy, for firſt the Charter of the fee ſimple was abſolute, and after the ſame day it was covenanted between them, &c. this Covenant being made after the Charter, could neither alter the abſolute Charter, nor upon a condition precedent give him a Fee ſimple that had a Fee ſimple before.

Seignior Staffords caſe ubi ſupra.

To all the other Books, viz. 7. E. 3. 10. E. 3. 10 Aſſ. 44. E. 3. 43 Aſſ. and 6. R. 2. they ſay that being rightly underſtood they are good Law, for in ſome of thoſe Books, as namely in 10 E. 3. 10 Aſſ. &c. it appeareth that there was a charter made in ſurety of the term, which, ſay they, muſt be intended thus, viz. A man maketh a leaſe for years, the leſſee enters and the leſſor makes a Charter to the leſſee, and thereby doth grant unto him, that if he pay unto the leſſor a hundred Marks during the term, that then he ſhall have and hold the lands to him and to his heirs.

In this caſe, ſay they, there need no livery of ſeiſin, but doth enure as an executory grant by increaſing of the eſtate, and in that caſe, without queſtion, the fee ſimple paſſeth not before the condition performed.

Pl. Com. in Nichols caſe 487.

And therefore Littleton warily putteth his caſe of an eſtate made all at one time by one conveyance, and a livery made thereupon.

For Littleton himſelf in the Section before ſaith, That in that caſe without a livery nothing paſſeth of the freehold and inheritance.

And this diverſity (ſay they) is proved by Books, and thereupon they cite (d) 10. E. 3. 54. in a Writ of Dower, the tenant vouched to warranty, the vouchee as to part pleaded that the husband was never ſeiſed of any eſtate wherein he might be endowed, as to the reſidue the Tenant pleaded that he leaſed to the husband in gage upon condition that if the leſſor paid ten Marks at a certain day, that he ſhould re-enter, and if he failed of payment, that the land ſhould remain to the husband and his heirs, which muſt be intended to be done by one entire act, and pleaded that he paid the money at the day, which is allowed to be a good plea. Ergo, the Fee ſimple paſſed by the livery, otherwiſe the plea had amounted that the husband was never ſeiſed, &c. And ſay they that it cannot be intended, that the Judges ſhould be of one opinion in Trinity Term, and of another opinion in Michaelmas Term in the ſame year, and therefore (they hold) their ſeveral opinions are in reſpect of the ſaid diverſity of the caſes.

(d) 10. E. 3. 54.

(e) 32. E. 3. tit. garr. 30. (e) 32. E. 3 tit. garr. 30. A tenant by the curteſie made a leaſe for years, and in ſurety of the term, &c. made a Charter in Fee ſimple, and made livery according to the Charter (nor a ſpecial mention made of livery in this caſe) and iſſue being taken in an Aſſiſe, whether the tenant

remant by the courteſie demiſed in fee, upon the ſpecial matter found, it was adjudged that a Fee ſimple paſſed, and that the heir might enter for a forfeiture, which ſay they, in caſe of Livery is an expreſs judgment in the point agreeing with the opinion of Littleton.

(f) 43. E. 3. 35. in an action of Waſte againſt one in Lands which he held for term of years, Belknap pleaded thus for the Defendant, that the Defendant was ſeiſed in fee, and infeoffed the Plaintif, &c. and after the Plaintif demiſed the Land back again to the Defendant for years upon condition, that if the Defendant paid certain money, &c. that then the defendant might retain the land to him and to his heirs, and if not, the plaintif might enter, &c. and pleaded that the term endured, and that the day of payment was not come, and demanded judgment, if the plaintif may maintain an action of Waſte, inaſmuch as the defendant had now a fee ſimple, and ſhewed forth the Indenture of Leaſe with the condition (which agreeth with Littletons caſe) all being done at one time, and by one deed, and a livery intended, and with Littletons opinion alſo. It is true, ſay they, that Cavendiſh a Counſel with the plaintif offered to demur, but never proceeded. (g) Vide 20. Aſſ. pl. 20.

(f) 43. E. 3. 35.

(g) 20. Aſſ. pl. 20.

Other authorities they cite, but theſe (as I take it) are the principal, and therefore for avoiding of tediouſneſs, having I fear been too long upon this point, the others I omit. Only this they adde, that Littleton had ſeen and conſider'd of the ſaid Books, and have ſet down his opinion where livery of ſeiſin is made upon a conveyance made at one time, as hath been ſaid, that he hath fee ſimple conditional.

Benigne lector utere tuo judicio, nihil enim impedio. Conditio beneficialis quæ ſtatum conſtruit benigne ſecundum verborum intentionem eſt interpretanda, odioſa autem quæ ſtatum deſtruit ſtricte ſecundum verborum proprietatem eſt accipienda. Lib. 8. f. 90. Frances caſe.

A Leaſe is made to a man and a woman for their lives upon condition, that which of them two ſhall firſt marry, that one ſhall have fee, they entermarry, neither of them ſhall have fee, for the incertainty.

Note if the condition be to increaſe an eſtate (that is to ſay) to have fee upon payment of money to the leſſor or his heirs, at a certain day, before the day the leſſor is attainted of treaſon or felony, and alſo before the day is executed, now is the condition become impoſſible by the act and offence of the leſſor, and yet the leſſee ſhall not have fee, becauſe a precedent condition to increaſe an eſtate muſt be performed, and if it become impoſſible, no eſtate ſhall riſe.

¶ *Pur ceo que le grantor ne poet entrer, &c.* Regularly when any man will take advantage of a condition, if he may enter he muſt enter, and when he cannot enter he muſt make a claim, and the reaſon is for that a freehold and inheritance ſhall not ceaſe without entry or claim, and alſo the Feoffor or Grantor may wave the condition at his pleaſure. Pl. Com. Browning & Beſtons caſe. 133. b.

If a man grant an Advowſon to a man and to his heirs upon condition, that if the Grantor, &c. pay 20 pound on ſuch a day, &c. the ſtate of the Grantee ſhall ceaſe or be utterly void. The Grantor payeth the money, yet the ſtate is not reveſted in the Grantor before a claim, and that claim muſt be made at the Church. (d) And ſo it is of a reverſion or remainder of a Rent, or Common, or the like, there muſt be a claim before the ſtate be reveſted in the Grantor by force of the condition, and that claim muſt be made upon the land. Vi. Littleton cap. Villein

(d) Pl. Com. Brownings caſe. 133. b.

A fortiori in caſe of a feoffment which paſſeth by livery of ſeiſin there muſt be a re-entry by force of the condition before the ſtate be void. 42. E. 3. 1.

If a man bargaineth and ſelleth land by deed indented and inrolled with a Proviſo, that if the bargainer pay, &c. that then the ſtate ſhall ceaſe and be void, he payeth the money, the ſtate is not reveſted in the Bargainer before a re-entry, and ſo it is if a bargain and ſale be made of a reverſion, remainder, advowſon, rent, common, &c. And ſo it is if lands be deviſed to a man and to his heirs upon condition, that if the Deviſee pay not 20 pound at ſuch a day, that his eſtate ſhall ceaſe and be void, the money is not paid, the ſtate ſhall not be veſted in the heir before an entry. And ſo it is of the Reverſion or Remainder, an Advowſon, Rent, Common, or the like. Lib. 2. f. 50. Sir Hugh Cholmleys caſe.

But the ſaid rule hath divers exceptions. Firſt in this preſent caſe of Littleton, for that he can make no entry, he ſhall not be driven to make any claim to the reverſion, for ſeeing by conſtruction of law the Freehold and Inheritance paſſeth Maintenant out of the leſſor: by the like conſtruction, the freehold and inheritance by the default of the leſſee ſhall be reveſted in the leſſor without entry or claim. Vide Lib. 1. fo. 174. Digs caſe. 20. E. 4. 18. 19.

2. If I grant a rent charge in fee out of my land upon condition, there if the condition be broken, the rent ſhall be extinct in my land, becauſe I (that am in poſſeſſion of the land) need make no claim upon the land, and therefore the law ſhall adjudge the rent void without any claim. Pl. Com. Browning caſe 133. b. 20. E. 4. 19.

3. If a man make a feoffment unto me in fee upon condition that I ſhall pay unto him 20 pound at a day, &c. before the day I let unto him the land for years reſerving a rent and 20. E. 4. 19. 20. H. 7. 4. b.

after fail of payment the Feoffee shall retain the land to him and to his heirs, and the rent is determined and extinct, for that the Feoffor could not enter, nor need not claim upon the land for that he himself was in possession, and the condition being collateral is not suspended by the lease, otherwise it is of rent reserved.

Lib. 1. 174. Digges case. 4. If a man by his deed in consideration of fatherly love, &c. covenant to stand seised to the use of himself for life, and after his decease to the use of his eldest son in tail, the remainder to his second son in tail, the remainder to his third son in fee with a Proviso of revocation, &c. the father doth make a revocation according to the Proviso, the whole estate is maintenant revested in him without entry or claim for the cause aforesaid.

¶ *Le grantee ad uncore title pur 3 ans.* By this it appeareth that albeit the lessee had Pro tempore a fee simple, yet after that fee simple is devested out of him, and vested in the Lessor, he shall hold the lands for three years by the express limitation of the parties.

Pl. Com. in Fulmerstons case. 107. b. If a man make a lease for 40 years, the lessee afterwards taketh a lease for 20 years, upon condition that if he doth such an act, that then the lease for 20 years shall be void, & after the lessee break the condition, by force whereof the second lease is void, notwithstanding the lease for 40 years is surrendred, for the condition was annexed to the lease for 20 years, but the surrender was absolute. So it is if a man make a lease for 40 years, & the lessor grant the reversion to the lessee upon condition, and after the condition is broken, the term was absolutely surrendred. And the diversity is when the lessor grants the reversion to the lessee upon condition, and when the lessee grants or surrenders his estate to the lessor, for a condition annexed to a surrender may revest the particular estate, because the surrender is conditional. But when the lessor grants the reversion to the lessee upon condition, there the condition is annexed to the reversion, and the surrender absolute.

7. E. 4. 29. 14. E. 4. 6. 45. E. 3.

A gardian in Chivalrie took a feoffment of the infant within age that was in his ward, and the infant brought an assise, and the gardian shall be adjudged a disseisor, which proveth that the feoffment as against the Infant was void, and yet by acceptance thereof the interest of the gardian was surrendred.

8. E. 2. Ass. 395.

A man maketh a lease for term of life by Deed, reserving the first seven years a Rent, and if the lessee will hold the land after the seven years, to pay a rent in money, the lesse will not hold over, but surrender his term. In this case in judgment of law he had but a term for seven years. And so it is if a man make a lease for life, and if the lessee within one year pay not 20 shillings, that he shall have but a term for two years, if he pay not the money the estate for life is determined, and he shall have the land but for two years.

50. E. 3. 27.

¶ *Ceo est bone proofe adonques que le reversion est in luy, &c.* Here is implied that no man can have an action of Waste, unless the reversion be in him, and by the authority of our Author the reason of a case, and well applied is a good proof in law.

Sect. 351.

¶ Mes en tiels cases de feoffment sur condition, lou le feoffor poit loyalment entrer pur le condition enfreint, &c. la le feoffor nad le franktenement devant son entrie, &c.

But in such cases of feoffment upon condition, where the feoffor may lawfully enter for the condition broken, &c, there the feoffor hath not the freehold before his entry, &c.

This upon that which hath been said is evident, and needeth no further explanation.

Sect 352.

¶ Que le *feoffee donera, &c.* Here is no time limited, therefore the Feoffee by the law hath time du-

3. Mar. 134. Dyer 14. Eliz. Dyer. 311. b. 2. H. 4. 5. 44. E. 3. 9. Lib. 2. fol. 79. 80. 81. in Seignior Cromwels case

¶ Item si feoffment soit fait sur tiel condition, que l'feoffee donera le terre al feof-

Also if a feoffment be made upon such condition that the feoffee shall give the land to

for

foz, & a la feme del feoffoz, a aver & tener a eux, & a les heires de lour deux corps engendrez, & pur default de tiel iſſue, le remainder al droit heires le feoffoz. En ceo cas ſi l'baron deby, bivant la feme devant aſcun eſtate en le taile fait a eux, &c. donques doit le feoffee per la ley faire eſtate a la feme cy pres le condition, et auxy cy pres lentent de le condition que il poit faire, ceſt aſcavoir, de leſſer la terre al feme pur terme de vie ſans impeachment de waſt, l'remainder apres ſon deceaſe a les heires de corps ſa baron de luy engendrez, & pur default de tiel iſſue, le remainder as droit heires le baron. Et la cauſe pur que le leaſe ſerra en ceſt cas a la feme ſole ſans impeachment de waſt, eſt pur ceo q̄ le condition eſt, q̄ leſtate ſerra fait al baron & a la feme en taile. Et ſi tiel eſtate uſt eſte fait en le vie le baron, donques apres le mort le baron el uſt ewe eſtate ent en le taile: quel eſtate eſt ſans impeachment de waſt; Et iſſint il eſt reaſon, que cy pres que

the feoffor, and to the wife of the feoffor, to have and to hold to them and to the heirs of their two bodies engendred, and for default of ſuch iſſue the remainder to the right heirs of the Feoffor. In this caſe if the huſband dieth living the wife before any eſtate in tail made unto them, &c. then ought the feoffee by the Law to make an eſtate to the wife as neer the condition, and alſo as neer to the intent of the condition as he may make it, that is to ſay, to let the Land to the wife for term of life without impeachment of waſte, the remainder after his deceaſe to the heirs of the body of her husband on her begotten, and for default of ſuch iſſue the remainder to the right heirs of the husband. And the cauſe why the leaſe ſhall be in this caſe to the wife alone without impeachment of waſte is for that the Condition is, that the eſtate ſhall be made to the huſband and to his wife in tail. And if ſuch eſtate had been made in the life of the husband, then after the death of the huſband ſhe ſhould have

ring his life, unleſs he be haſtened by the requeſt of the Feoffor or the heirs of his body, as Littleton ſaith in the next Section.

¶ *Si le baron devie, &c.* But in this caſe if the Feoffee dieth before any Feoffment made, then is the condition broken, becauſe he made not the eſtates, &c. within the time preſcribed by the Law. But if the feoffment be made upon condition that the Feoffee before the feaſt of St. Michael the Archangel next following give the land to the Feoffor and to his wife in tail, ut ſupra, and before the day the Feoffee dieth, the ſtate of the heir of the Feoffee ſhall be abſolute, becauſe a certain time is limited by the mutual agreement of the parties, within which time the condition becometh impoſſible by the act of God as hath been ſaid before, and therefore it is neceſſary when a day is limited, to adde to the condition, that the Feoffee or his heirs do perform the condition, but when no time is limited, then the Feoffee at his peril muſt perform the condition during his life (although there be no requeſt made) or elſe the feoffor or his heirs may re-enter.

15.H.7.13. 33.H.6.26. 27.9.Eliz Dyer 262. Pl. Com. 456. Lib.2.fol.79.Seignior Cromwells caſe.

¶ *Fait a eux, &c.* Here the (&c.) implieth according to the Condition with the remainder over.

¶ *Al feoffor & a la feme, &c.* Here it appeareth that albeit the Feme be a ſtranger, yet the Feoffee is not bound to make it within convenient time, becauſe the Feoffor who is priby to the condition is to take jointly

27.E.3. Dower 135. Seignior Cromwells caſe, ubi ſupra.

jointly with her. And ſo it is if the condition be to infeoffe the Feoffor and an eſtranger, the Feoffee hath time during his life unleſs he be haſtened by requeſt. Otherwiſe it is (as hath been ſaid) where the condition is to infeoffe a ſtranger or ſtrangers only.

home poit faire eſtate a lentent de condition, &c. q̃ il ſerroit fait, &c. coment que el ne poit aber eſtate en taile ſi come il puiſſoit aber ſi le done en le taile uſt eſtre fait a ſa baron et a luy en le vie ſa baron.

had an eſtate in tail, which eſtate is without impeachment of waſte. And ſo it is reaſon, that as near as a man can make the eſtate to the intent of the condition, &c. that it ſhould be made, &c. albeit ſhe cannot have eſtate in tail, as ſhe might have had if the gift in tail had been made to her husband and to her in the life of her husband, &c.

If a man make a feoffment in fee upon condition that the Feoffee ſhall make a gift in tail to the Feoffor, the remainder to a ſtranger in fee, there the Feoffee hath time during his life, as is aforeſaid, because the Feoffor who is party, and privy to the condition, is to take the firſt eſtate. But if the condition were to make a gift in tail to a ſtranger, the remainder to the Feoffor in fee, there the Feoffee ought to do it in convenient time, for that the ſtranger is not privy to the condition, and he ought to have the profits preſently, as before hath been ſaid.

Seignior Cromwels caſe ubi ſupra.

¶ *De faire eſtate al feme cy pres le condition, & auxy cy pres lentent del Condition que il poit faire, &c.*

A. infeoffe B. upon condition that B. ſhall make an eſtate in Frankmarriage to C. with one ſuch as is the daughter of the feoffor; in this caſe he cannot make an eſtate in Frankmarriage, becauſe the eſtate muſt move from the feoffee, and the daughter is not of his blood, but yet he muſt make an eſtate to them for their lives, for this is as neer the condition as he can. And ſo it is if the condition be, to make to A. (which is a meer Lay-man) an eſtate in frankalmoigne, yet muſt he make an eſtate to him for his life, for the reaſon here yielded by Littleton.

A diverſity is to be underſtood between conditions that are to create an eſtate, and conditions that are to deſtroy an eſtate: for here it appeareth, That a condition that is to create an eſtate, is to be performed by conſtruction of law, as neer the condition as may be, and according to the intent and meaning of the condition, albeit the letter and words of the condition cannot be performed: but otherwiſe it is of a condition that deſtroyeth an eſtate, for that is to be taken ſtrictly, unleſs it be in certain ſpecial caſes: and of this ſomewhat hath been ſaid before in this Chapter.

30. N. 8. tit. Condit. Br. 190. V. 33. H. 8. tit. Joint. Br. 62.

If a man morgage his Land to W. upon condition, that if the Morgageor and I. S. pay twenty ſhillings at ſuch a day to the Morgagee, that then he ſhall re-enter, the Morgageor dieth before the day, I. S. pays the money to the morgagee, this is a good performance of the condition, and yet the letter of the condition is not performed. But if the Morgageor had been alive at the day, and he would not pay the money, but refuſed to pay the ſame, and I. S. alone had tendred the money, the Morgagee might have refuſed it. But if a man make a leaſe to two for years, with a proviſo, If the Leſſees dye during the term, the Leſſor ſhall re-enter, one Leſſee alien his part and dye, the Leſſee cannot re-enter, but the Aſſignee ſhall enjoy the term ſo long as the ſurvivor liveth, and the reaſon is, becauſe the leaſe by the proviſo is not to ceaſe till both be dead. But in the former caſe, albeit the morgageor be dead, yet the act of God ſhall not diſable I. S. to pay the money, for thereby the morgagee receives no prejudice. And ſo it is that caſe, if I. S. had dyed before the day, the morgageor might have paid it.

Lib. 2. fo. 79. 80. 81. Seignior Cromwels caſe. 2. H. 4. 5.

And here is to be obſerved a diverſity when the Feoffee dyeth, for then (as hath been ſaid) the Condition is broken, and when the Feoffor dyeth, for then the eſtate is to be made as neer the intent of the Condition as may be.

¶ *Al feme pur terme de ſa vie ſans impeachment de waſt.*

Here it appeareth, That this eſtate for life ought to be without impeachment of waſt, and yet if the wife doth accept of any eſtate for life, without this clauſe, without impeachment of waſt, it is good, becauſe the ſtate for life is the ſubſtance of the Grant, and the privilege to be without impeachment of waſte is collateral, and only for the benefit of the wife, and the omiſſion of it only for the benefit of the heir.

2. H. 4. 5. Seignior Cromwels caſe ubi ſupra.

Alſo if the wife take husband before requeſt made, & then they make requeſt, & the ſtate is

is made to the husband and wife, during the life of the wife, this is a good performance of the condition, albeit the eſtate be made to the husband and wife, where Littleton ſaith it is to be made to the wife, but it is all one in ſubſtance, ſeeing that the limitation is during the life of the wife.

¶ *Sauns impeachment de Waſt.* Abſque impetitione vaſti, (that is) without any challenge or impeachment of waſte, and by force hereof the Leſſee may cut down the trees and convert them to his own uſe. Otherwiſe it is if the words were, Sauns impeachment per aſcun action de Waſt, for then the diſcharge extends but to the action, and not to the trees themſelves, and in that caſe the leſſor ſhall have them. See in my Reports l. 11. fo. 83. lib. 9. f. 9. l. 2. 23.

And it is to be obſerved, that after the deceaſe of the husband the ſtate is not to be made to the wife and the heirs of her body by her late husband ingendred, ſo to have an eſtate of Inheritance as ſhe ſhould have had by ſurrender, if the eſtate had been made according to the condition, but only an eſtate for life without impeachment of waſte, &c. for that by the authority of Littleton is not ſo neer the intent of the condition, as the caſe that Littleton putteth. But I will ſearch no further into this caſe, but leave it to the learned and judicious reader.

¶ *Et apres ſon deceaſe a les heires del corps le baron de luy engendres.*

Note here, admit that there were two Iſſues in tail, the remainder ſhall preſently veſt only in the eldeſt, & yet if he dieth without Iſſue, it ſhall per formam doni veſt in the youngeſt, as hath been ſaid in the Chapter of Eſtate tail: and ſo it is tacite proved here, for otherwiſe the condition (if there were two Iſſues) could not be performed.

Sect. 353.

¶ Item en teſt caſe ſi le baron et la feme ont iſſue, et deviont devant le done en le Taile fait a eux, &c. donques le Feoffee doit faire eſtate al Iſſue et a les heires de corps ſon pere et ſon mere engendres, et pur default de tiel Iſſue le remainder a les droit heires le Baron, &c. Et meſme la Ley eſt en auters caſes ſemblables. Et ſi tiel Feoffee ne voet faire tiel eſtate, &c. quaunt il eſt reaſonablement requiſe per eux que devopent aver eſtate per force de le condition, &c. donque poet le Feoffor ou ſes heires enter.

ALſo in this caſe if the husband and wife have iſſue, & die before the gift in tail made to them, &c. then the feoffee ought to make an eſtate to the Iſſue, and to the heirs of the body of his Father and his mother begotten, and for default of ſuch Iſſue, &c. the remainder to the right heirs of the husband, &c. And the ſame Law is in other like caſes: and if ſuch a Feoffee will not take ſuch eſtate, &c. when he is reaſonably required by them which ought to have the ſtate by force of the Condition, &c. then may the Feoffor or his heirs enter.

¶ *Quant il eſt reaſonablement requiſe per eux queux devoyent aver eſtate per force de le Condition.*

Note here it appeareth, that the Feoffee hath time during his life to make the eſtate unleſs he be reaſonably required by them that are to take the eſtate. This is to be intended of parties or privies, and not of meer ſtrangers, for there (as hath been ſaid) the ſtate muſt be made in convenient time.

And concerning the requeſt it is to be known, that when the requeſt is made, the party or privy muſt requeſt the feoffee at a time certain to be upon the land, and to make the ſtate according to the condition, for ſeeing no time certain is preſcribed for the making of the ſtate, and it is uncertain when the requeſt ſhall be made, ſuch requeſt and notice muſt be made as hath bin ſaid before in this Chapter. And of this Section, with the (&c.) there needeth not upon that which hath been ſaid any further application.

Sect.

Sect. 354.

¶ *Qve le feoffee re-enfeoffera pluſors homes.* By the re-feoffment it is implied to be made to the Feoffors, for a feoffment ober to ſtrangers cannot be ſaid a re-feoffment, and if the feoffment ſhould be made ober to ſtrangers only, then as hath been often ſaid, it muſt be made in conbenient time.

¶ *Al Heire celuy que ſurveſquiſt, a aver & tener a luy & a les heires celuy quē ſurveſquiſt.* Hereupon queſtions habe been made, wherefor the Habendum is not to the heirs of the heir, and for what reaſon it is by Littleton limited to the heirs of the ſurbibor. And the cauſe is, for that if it were made to the heirs of the heir, then ſome perſons by poſſibility ſhould be inheritable to the land, which ſhould not habe inherited if the eſtate had been made to the ſurbibor and his heirs, and conſequently the condition broken.

For example, If the ſurbibor took to wife Alice Fairefield, in this caſe if the limitation were to the ſon and his heirs, then if the ſon ſhould dye without heirs of his father, the blood of the Fairefields (being the blood of his mother) ſhould inherit. But if the limitation be to the right heirs of the father, then ſhould not the blood of the Fairefields by any poſſibility inherit, for then it is as much as if the ſtate had been made to the ſurbibor and his heirs: And therefore theſe words, (Et a les heires celuy que ſurveſquiſt) which many habe thought ſuperfluous, are very material. Note well this kind of fee ſimple, for it is worthy the obſervation: But ſufficient hath been ſaid to open the meaning of Littleton, and therefore I will dibe no deeper into this point, but leabe it to the further conſideration of the learned reader.

Vide Sect. 4.

¶ ITem ū feoffment ſoit fait ſur condition que le feoffee re-infeoffe pluſzs hōes a aber et tener a eux et a lour heires a touts jours, et touts ceux que deboient aber eſtat moront devant alcun eſtat fait a eux, donque doit l' feoffee fait eſtate al heir celuy que ſurveſquiſt de eux, a aber & tener a luy et a les heires celuy que ſurveſquiſt.

ALſo if a Feoffment be made upon condition, That if the feoffee ſhall re-infeoffe many men, to have and to hold to them and to their heirs for ever, & all they which ought to have eſtate, dye before any eſtate made to them, then ought the feoffee to make eſtate to the heir of him which ſurvives of them, to have and to hold to him and to the heirs of him which ſurviveth.

Sect. 355.

¶ ITem ū feoffment ſoit fait ſur condition, denfeoffer un auter, ou ū doner en taile a un auter &c. ū le feoffee debant l' perfozmance del condition enfeoffa un eſtranger, ou fait un leaſe pur ẽme de vie, donques poet le feoffee

ALſo if a Feoffment be made upon condition, To enfeoffe another, or to make a gift in tail to another, &c. if the Feoffee before the performance of the Condition, enfeoffe a ſtranger, or make a Leaſe for life, then

¶ Littleton having ſpoken of defaults of perfozmance, or expreſs breaches of conditions, ſpeaketh now in what caſes the feoffee in judgment of Law doth diſable himſelf to perfozm the Condition: And of diſabilities ſome be by act of the party, and ſome by act in law.

¶ *Ou a doner en taile a un auter, &c.* Here is implied an eſtate for life, or for years, &c.

for & ſes heires entrer, &c. pur ceo q̄ il ad luy meſm̄ diſable de perform̄er le condition, entant que il ad fait eſtate a un auter, &c.

may the Feoffor and his heirs enter, &c. becauſe he hath diſabled himſelf to perform the condition in aſmuch as he hath made an eſtate to another, &c.

¶ *Enfeoffe un Eſtranger un fait un Leaſe pur terme de vie.* This is a diſability by the act of the party, for herein the Feoffee hath diſabled himſelf to make the Feoffment or other eſtate according to the Condition. And to ſpeak once for all. 13.H.7.23.b. 32.E.3. barre 264. 21.Aſſ.28. 38.Aſſ.pl.7.

the Feoffee is diſabled when he cannot convey the land over according to the Condition in the ſame plight, quality, and freedom, as the land was conveyed to him, for ſo the Law requireth the ſame, as ſhall manifeſtly appear hereafter. And here where our Author ſpeaketh of a feoffment, he includeth an eſtate tail as well as the fee ſimple.

Sect. 356.

¶ EN meſme le manner eſt, ſi le feoffee, devant le condition performe leſſa meſme la terre a un eſtranger, pur terme des ans, en ceſt caſe le feoffor et ſes heires poyent entrer, &c. pur ceo que le feoffee ad luy diſable de faire eſtate de les tenements accordant a ceo que eſtoit en les tenements, quant eſtate ent fuit fait a luy. Car ſi il voile faire eſtate de les tenements accordant a le condition, &c. donques poit le leſſee pur terme dans enter & ouſte meſme celuy a que leſtate eſt fait, &c. et occupier ceo durant ſon terme.

¶ IN the ſame manner it is if the Feoffee before the Condition performed, letteth the ſame land to a ſtranger for term of years, in this caſe the Feoffor and his heirs may enter, &c. becauſe the Feoffee hath diſabled him to make an eſtate of the tenements according to that which was in the tenements, when the ſtate thereof was made unto him. For if he will make an eſtate of the tenements according to the Condition, &c. then may the Leſſee for years enter and ouſt him to whom the eſtate is made, &c. and occupy this during his term.

¶ *SI le feoffee devant le condition performe leſſa meſme la terre a un eſtranger pur terme des ans, &c.* Here the &c. implieth a leaſe to take effect in futuro as well as in præſenti, alſo a Leaſe for one year, or half a year, &c.

The reaſon of this is evidently ſet down before. And again, of diſabilities ſome be by Act in præſenti, whereof Littleton hath put two examples, and ſome in futuro, whereof now he will ſpeak in the next Section.

Sect. 357.

¶ ET pluſors ont dit, que ſi tiel feoffment ſoit fait a un home ſole ſur ſi le condition & devant q̄ il ad per-

AND many have ſaid that if ſuch feoffment be made to a ſingle man upon the ſame Condition, and before he hath per-

¶ FIrſt here is an example of a diſability both by act in Law, and in futuro, for by marriage the wife is entitled by Law to Dower, after the death of her husband. (a) 13. H. 7. 23. b. 34.E.3. dower.127.M. 27. E.3. tit. dower.135. 28. Aſſ.Pl.4. 11.H.7.7. 6.lib.2.fol.59.b.

Secondly, It (a) appeareth that albeit the Wife by the marriage is but intitled to

have dower, and the eſtate which ſhe is to have in futuro, viz. after the deceaſe of her husband, yet it is a preſent cauſe of entrie. As a leaſe for years to begin at a day to come is a preſent diſability and cauſe of reentry, for that the Land is not in that freedom and plight, as it was conveyed to the Feoffee, and after the ſtate made over according to the Condition the land ſhall be charged therewith.

Julius Winningtons caſe lib. 2. fol. 59. 60.

¶ *En un auter plight.* Plight is an old Engliſh word, and here ſignifieth not only the eſtate, but the habit and quality of the land, and extendeth to rent charges, and to a poſſibility of Dower. Vide Sect. 289. where Plight is taken for an eſtate or intereſt of and in the land it ſelf, and extendeth not to a Rent Charge out of the land.

¶ *A un home ſole.* For if the Feoffee were married at the time of the feoffment, then the Dower can be no diſability, becauſe the Land ſhall remain in ſuch Plight as it was at the time of the feoffment made unto him.

forme meſme la condition il prent feme, donques le feoffor et ſes heires maintenant poient entrer, pur ceo que il feſoit eſtate accordant a la condition, & puis mozuſt, donques la feme ſerra endowe, et poit recover ſa dower per briefe de dower, &c. et iſſint per le priſel del feme les tenements ſont mis en un auter plite que ne fueront al temps del feoffment ſur condition, pur ceo que adonques nul tiel feme fuit dowable, ne ſerroit dowe per la ley, &c.

formed the ſame Condition he taketh wife, then the Feoffor and his Heirs maintenant may enter, becauſe, if he hath made an eſtate according to the condition & after dieth, then the wife ſhall be endowed, and may recover her Dower by a Writ of Dower, &c. and ſo by the taking of a wife, the Tenements be put in another plight then they were at the time of the feoffment upon Condition, for that then no ſuch Wife was dowable, nor ſhould be endowed by the Law, &c.

¶ *Donques le feoffor & ſes heires maintenant poient entrer.* Here it appeareth that ſeeing that for this title or poſſibility the feoffor may preſently enter, that albeit the wife happen to dye before the husband, ſo as this title or poſſibility took no effect, yet the feoffor may re-enter, for the feoffee being diſabled at any time though the ſame continue not, yet the Feoffor may re-enter, for in that caſe he that is once diſabled is ever diſabled. And herein a diverſity is to be obſerved between a diſability for a time on the part of the feoffee, and a diſability for a time on the part of the feoffor. For if a man maketh a feoffment in fee upon condition that the Feoffee before ſuch a day ſhall re-enfeoffe the Feoffor, the Feoffee taketh wife, and the wife dyeth before the day, yet may the Feoffor re-enter.

So it is if the Feoffee before the day entreth into Religion, and is profeſſed, and before the day is deraigned, yet the feoffor may re-enter.

21. E. 4. 55. So it is if the feoffee before the day make a feoffment in fee, and before the day, take back an eſtate to him and his heirs, yet the feoffor may re-enter.

Albeit in theſe caſes a certain day be limited, yet the Feoffee being once diſabled is ever diſabled. And ſo it is when no time is limited by the parties, but the time is appointed by the Law.

But if a man make a feoffment in fee upon Condition, that if the feoffor or his heirs pay a certain ſum of money before ſuch a day, the feoffor commit treaſon, is attainted and executed, now is there a diſability on the part of the feoffor, for he hath no heir, but if the heir be reſtored before the day he may perform the Condition, as it was reſolved (a) Trin. 18. Eliz. in Communi Banco in Sir Thomas Wiats caſe, which I heard and obſerved. Otherwiſe it is if ſuch a diſability had grown on the part of the Feoffee, and the reaſon of the diverſity is, for that as Littleton ſaith, maintenant by the diſability of the feoffee, the Condition is broken, and the feoffor may enter, but ſo it is not by the diſability of the feoffor, or his heirs, for if they perform the Condition within the time, it is ſufficient, for that they may at any time perform the Condition before the day. And ſo it is if the feoffor enter into religion, and before

(a) Trin. 18. Eliz. in Communi Banco in Sir. Thomas Wiats caſe.

the day is deraigned, he may perform the condition for the cause aforesaid. Et sic de similibus. The (&c.) in this Section are sufficiently explained.

Sect. 358.

¶ EN meisme le maner est, si le feoffee charge la terre per son fait dun rent charge devant le performance del condition, ou soit oblige en un estatute de le Staple, ou statute Merchant, en tiels cases le feoffor et ses heires poyent entrer, &c. *Causa qua supra.* Car quecunque que devull a les tenemts per le feoffment de le feoffee, eux covient estre liables, et estre mis en execution per force de lestatute Merchant, ou de statute del Staple. Quære. Mes quant le feoffor ou ses heires, pur les causes avant dits, averont entrer, come ils devoient, tome il semble, &c. donques touts tiels choses que devant tiel entrie puissent troubler ou encumber les tenemēts issint dones surconditiō, &c. quant a meismes l's tenemēts sont outterment defeats.

¶ IN the same manner it is if the Feoffee charge the land by his Deed with a rent charge before the performance of the Condition, or be bound in a statute Staple or statute Merchant, in these cases the Feoffor and his heirs may enter, &c. *Causa qua supra.* For whosoever cometh to the lands by the feoffment of the feoffee, they ought to be liable, and put in execution by force of the Statute Merchant, or of the Statute Staple. *Quære.* But when the Feoffor or his heirs for the causes aforesaid, shall have entred, as it seems, they ought, &c. then all such things which before such entry might trouble or incumber the Land so given upon condition, &c. as to the same Land, are altogether defeated.

¶ *Poyent entrer, &c.* And here it is to be understood, that the grant of the rent charge is a present disability of the feoffee, and therefore albeit the grantee doth bring a writ of Annuity, and discharge the Land of it, ab initio, yet the cause of entry being once given by the Act of the Feoffee, the Feoffor may re-enter. And so it is if the grant of the rent charge were made for life, and the Grantee died before any day of payment, yet the Feoffor may re-enter. 13.H.7.23.b.44.E.3.9.b. 26.E.3.73.20.H.6.34. Julius Winningtons case ubi supra.

The like law is of any judgment given against the Feoffee wherein debt or damages are recovered.

¶ *Ou soit oblige in un Statute de la Staple, &c.* If the Feoffee be disseised, and after bind himself in a Statute Staple, or Merchant, or in a Recognizance, or take wife, this is no disability in him, for that during the disseisin, the land is not charged therewith, neither is the Land in the hands of the disseisor liable thereunto. And in that case if the wife die or the Conuse release the Statute or Recognizance, and after the disseisee doth enter, there is no disability at all, because the Land was never charged therewith, and therefore in that cas the feoffee may enter and perform the Condition in the same plight and freedom as it was conveyed unto him. Lib. 2. fol. 59. 60. Julius Winningtons case

And it is to be observed, that Littl. putteth these cases as examples, for there are some other disabilities implyed, that are not here expressed. 18.Ass.Pl.ultimo.19.E.3 29.Lib.2.fol.80.b.Sir Cromwels case.

The Lord Clifford did hold his Barony and the Sheriffwick of Westmorland of the King by Grand Serjanty in capite, and the King gave him Licence that he might infeoffe thereof divers Chaplains in fee, so that they should give the same to the Lord Clifford and the heirs males

mates of his body the remainder over, &c. the Lord Clifford according to the Licence intended the Chaplains, and before they made the reconveyance the Lord Clifford dyed, and it was adjudged that the heir might enter for the condition broken. For in this caſe the feoffees were bound by law to have made the gift in tail to the Lord Clifford himſelf, albeit he never made any requeſt, for otherwiſe they purſued not the licence, and if they ſhould make the ſtate to the iſſue of the Lord Clifford, then might the King ſeiſe the Barony, &c. for default of a licence, and that in default of the Feoffees. And then the ſame ſhould not be in the ſame plight and freedom as it was at the time of the feoffment made upon condition, which is worthy of obſervation.

If a man grant an Advowſon upon condition that the grantee ſhall regrant the ſame to the Grantor in tail. In this caſe if the Church become void before the regrant or before any requeſt made by the Grantor, he may take advantage of the condition, becauſe the Advowſon is not in the ſame plight as it was at the time of the grant upon condition. And ſo was it reſolved. (a) Paſch. 14. Eliz. in communi Banco, between Andrews and Blunt, which I heard and obſerved, and which my Lord Dier hath omitted out of his report of that caſe, and therefore the Grantee in that caſe at his peril muſt regrant it before the Church become void, or elſe he is diſabled, otherwiſe he hath time during his life if he be not haſtened by requeſt.

(a) Paſch. 14. Eliz. 311. Dier.

If the feoffee ſuffer a recovery by default upon a feigned title, before execution ſued the Feoffor may re-enter for this diſability. Et ſic de ſimilibus.

44. E. 3. 9.

Sect. 359.

¶ *ET en le fait eſt nul condition, &c.* either in deed or in law.

¶ *Et le feoffment eſt en tiel force ſicome nul tiel fait uſt eſte fait.* And the reaſon hereof is, for that the Eſtate paſſeth by the livery of ſeiſin. And in this caſe the feoffor upon the delivery of ſeiſin muſt expreſs the ſtate to him and his heirs or to the heirs of his body, &c.

18 E. 3. 19. 36. 17. Aſſ. p. 20. 8. H. 5. 8. 27. H. 6.

¶ Item, ſi un home fait un fait de feoffment a un auter, & en le fait eſt nul condition, &c. & quant le feoffor a luy voyle faire liverie de ſeiſin per force de meſme l' fait, il fait a luy le livery de ſeiſin ſur certaine condition, en ceſt cas rien de les tenements paſſa per le fait, pur ceo que le condition neſt compriſe deins le fait, & ſe feoffment eſt en tiel force ſicome nul tiel fait uſt eſte fait.

Alſo if a man make a deed of feoffment to another, & in the deed there is no condition, &c. & when the feoffor will make livery of ſeiſin unto him by force of the ſame deed, he makes livery of ſeiſin unto him upon certain condition, in this caſe nothing of the tenements paſſeth by the deed, for that the condition is not compriſed within the deed, and the feoffment is in like force as if no ſuch deed had been made.

If an agreement be made between two, that the one ſhall enfeoffe the other upon condition in ſurety of the payment of certain money, and after the livery is made to him and his heirs generally, the ſtate is holden by ſome to be upon condition in aſmuch as the intent of the parties was not changed at any time, but continued at the time of the livery.

34. Aſſ. pl. 1.

If a man make a Charter of feoffment in fee, and the feoffor deliver ſeiſin for life, the feoffee ſhall hold it but for life, but if the livery be expreſly for life, and alſo according to the deed, the whole fee ſimple ſhall paſs becauſe it hath a reference to the Deed.

13. E. 3 tit. Eſtoppel 177
19. E. 3. ibid. 184.

Sect. 360.

¶ *ITem ſi feoffment ſoit fait, &c.* And

¶ Item ſi feoffment ſoit fait ſur tiel

¶ Alſo if a feoffment be made con-

condition, q̃ le feoffee ne alienera la terre a nulluy, ceſt condition eſt voide, pur ceo que quant home eſt enfeoffe de terres ou tenements il ad power de eux aliener a aſcun perſon per la ley. Car ſi tiel condition ſerroit bone donque la condition luy oſteroit de tout le power que la ley luy dona, le quel ſerroit enconter reaſon, & pur ceo tiel condition eſt voyde.

upon this condition that the feoffee ſhall not alien the land to any, this condition is void, becauſe when a man is infeoffed of lands or tenements he hath power to alien them to any perſon by the law; for if ſuch a condition ſhould be good, then the condition ſhould ouſt him of all the power which the Law gives him, which ſhould be againſt reaſon, & therefore ſuch a condition is void.

the like law is of a deviſe in fee upon condition that the Deviſee ſhall not alien; the condition is void, and ſo it is of a grant, releaſe, confirmation or any other conveyance whereby a fee ſimple doth paſs. For it is abſurd and repugnant to reaſon, that he that hath no poſſibility to have the land revert to him, ſhould reſtrain his feoffee in fee ſimple, of all his power to alien. And ſo it is if a man be poſſeſſed of a leaſe for years, or of a horſe, or of any other chattel real or perſonal, and give or ſell his whole intereſt, or property therein upon condition that the Donee or Vendee ſhall not alien the ſame, the ſame is void, becauſe his whole intereſt and property is out of him, ſo as he hath no poſſibility of a Reverter, and it is againſt Trade and traffique, and bargaining and contracting between man and man: and it is within the reaſon of our Author that it ſhould ouſter him of all power given to him. Iniquum eſt ingenuis hominibus non eſſe liberam rerum ſuarum alienationem; and Rerum ſuarum quilibet eſt moderator, & arbiter. And again, Regulariter non valet pactum de re mea non alienanda. But theſe are to be underſtood of conditions annexed to the grant or ſale it ſelf in reſpect of the repugnancy, and not to any other collateral thing, as hereafter ſhall appear. Where our Author putteth his caſe of a feoffment of land, that is put but for an example: for if a man be ſeiſed of a Seigniory or a rent, or an Advowſon, or Common, or any other inheritance that lyeth in grant, and by his Deed granteth the ſame to a man and to his heirs upon condition that he ſhall not alien, this condition is void. But ſome have ſaid that a man may grant a Rent charge newly created out of lands to a man and to his heirs upon condition that he ſhall not alien that, that is good, becauſe the rent is of his own creation, but this is againſt the reaſon and opinion of our Author, and againſt the height and purity of a fee ſimple.

21.H.6.34.a.8 H.7.10.b. 33.Aſſ.11.24.Doct.& Stud.39.124.13.H.7.23.

Argumentum ex abſurdo. Vide Sect. 721.

Note before the Statute of Quia emptores terrarum might have made a feoffment in fee, and added further, That if he or his heirs did alien without licence, that he ſhould pay a fine, then this had been good. And ſo it is ſaid, that then the Lord might have reſtrained the alienation of his Tenant by condition, becauſe the Lord had a poſſibility of reverter, and ſo it is in the Kings caſe at this day, becauſe he may reſerve a tenure to himſelf.

14.H.4.13.H.7.23.

21.H.7.8.Lib.5. 56. Knights caſe.

If A. is ſeiſed of Black acre in fee, and B. infeoffeth him of White acre upon condition that A. ſhall not alien black acre, the condition is good, for the condition is annexed to other land, and ouſteth not the feoffee of his power to alien the land whereof the feoffment is made, and ſo no repugnancy to the ſtate paſſed by the feoffment, and ſo it is of gifts, or ſales of chattels reals or perſonals.

Sect. 361.

¶ Mes ſi l'condition ſoit tiel, que le feoffee ne alienera a un tiel, noſmant ſon noſme, ou

But if the condition be ſuch that the feoffee ſhal not alien to ſuch a one, naming his name, or to any of his

¶ If a feoffment in fee be made upon condition that the Feoffee ſhall not infeoffe I. S. or any of his heirs or iſſues, &c. this is good, for he doth not reſtrain the feoffee of all his power: the reaſon here yielded by our Author

Pl.Com.77.a.8.H.7. 10.b. 21.E.4.47.a.

Author is worthy of observation. And in this case if the Feoffee infeoffe I. N. of intent and purpose that he shall infeoffe I. S. some hold that this is a breach of the condition, for Quando aliquid prohibetur fieri, ex directo prohibetur & per obliquum.

a aſcun ď ſes heires, ou de iſſues ď un tiel, &c. ou hujuſmodi, les q̃ux conditions ne tollent tout la power dalienation del feoffee, &c. dongz tiel condition eſt bone.

heirs, or of the iſſues of ſuch a one, &c. or the like, which conditions do not take away all power of alienation from the feoffee, &c. then ſuch condition is good.

10.H.7.11.Dyer. & Stud.124.13.H.7.23. If a feoffment be made upon condition that the feoffee ſhall not alien in Mortmain, this is good, becauſe ſuch alienation is prohibited by Law, & regularly whatſoever is prohibited by the Law, may be prohibited by condition, be it Malum prohibitum, or malum in ſe. In ancient deeds of feoffment in fee there was moſt commonly a clauſe, Quod licitum ſit donatorio rem datam dare vel vendere cui voluerit exceptis viris religioſis & Judæis.

Bracton lib.1. f.13.a.

Sect. 362.

33.Aſſ.11.24. Lib.6.40. 41. Mildmays caſe. 21.H.6.33.13.H.7.23. 21. H. 7. 11. Vid.Sect.220.acc.

¶ NOte here the double negative in legal conſtruction ſhall not hinder the negative viz. Sub conditione quod ipſi nec hæredes ſui non alienarent. And therefore the Grammatical conſtruction is not always in judgment of Law to be followed.

¶ ITem ſi tenements ſoient dones en le taile ſur tiel condition, que le tenant en le taile ne ſes heires ne alieneront en fee, ne en le taile, ne pur terme dauter vie, forſqz pur lour vies demeſne, &c. tiel condition eſt bone. Et la cauſe eſt, pur ceo que quant il fait tiel alienation et diſcontinuance de le taile il fait le contrarie a lentent le donor, pur que leſtatute de W. 2. cap. 1. fuit fait, per quel eſtatute les eſtates en le taile ſont ordeines.

ALſo if lands be given in tail upon condition, that the tenant in tail nor his heirs ſhall not alien in fee, nor in tail, nor for term of anothers life, but only for their own lives, &c. ſuch Condition is good. And the reaſon is, for that when he maketh ſuch alienation and diſcontinuance of the entail, he doth contrary to the intent of the donor, for which the ſtatute of *W. 2. cap.* 1. was made, by which ſtatute the eſtates in tail are ordained.

¶ *Forſque pur lour vies demeſne, &c.* And yet if a man make a gift in tail upon condition that he ſhall not make a leaſe for his own life, albeit the ſtate be lawful, yet the condition is good, becauſe the reverſion is in the Donor. As if a man make a leaſe for life or years upon condition, that they ſhall not grant over their eſtate or let the land to others, this is good, and yet the grant or Leaſe ſhould be lawful. (a) If a man make a gift in tail upon condition that he ſhall not make a leaſe for three lives or 21 years according to the Statute of 32. H. 8. the condition is good, for the ſtatute doth give him power to make ſuch leaſes, which may be reſtrained by condition, and by his own agreement, for this power is not incident to the eſtate, but given to him collaterally by the Act, according to that rule of Law, Quilibet poteſt renunciare juri pro ſe introducto.

21.H.6.33.13.H.7.23. 24.27.H.8.17.19. 31.H.8.Dier 45.

(a) Dier 33.H.8.f.48.49

¶ *Quant il fiſt tiel alienation & diſcontinuance del ſtate taile.* And therefore if a gift in tail be made upon condition, That the Donee, &c. ſhall not alien, this condition is good to ſome intents, and void to ſome: for as to all thoſe alienations which amount to any diſcontinuance of the ſtate tail, (as Littleton here ſpeaketh) or is againſt the Statute of Weſtminſter 2. the condition is good without queſtion. But as to a common recovery the condition is void, becauſe this is no diſcontinuance, but a bar, and this common recovery

Vid.Lib.6.40.41. Sir Anth. Mildmays caſe

recovery is not restrained by the said Statute of W. 2. And therefore such a condition is repugnant to the estate tail, for it is to be observed, that to this estate tail there be divers incidents. First, to be disparished of Waste. Secondly, That the wife of the Donee in tail shall be endowed. Thirdly, that the husband of a Feme Donee after Issue shall be tenant by the Curtesie. Fourthly, that tenant in tail may suffer a common recovery: and therefore if a man make a gift in tail, upon condition to restrain him of any of these incidents, the condition is repugnant and void in law. And it is to be observed, (a) that a collateral warranty or a lineal with assets in respect of the recompence, is not restrained by the statute of Donis conditionalibus, no more is the common recovery in respect of the intended recompence. And Littleton to the intent to exclude the common recovery, saith, Tiel alienation et discontinuance, joyning them together. 22.E.3 19.17.El.343. Dyer. (a) 13. H.7.24.b.

If a man before the Statute of Donis conditionalibus, had made a gift to a man and to the heirs of his body, upon condition, that after Issue he should not have power to sell, this condition should have been repugnant and void. Pari ratione, after the Statute a man makes a gift in tail, the law tacite gives him power to suffer a common recovery, therefore to adde a condition, that he shall have no power to suffer a common recovery, is repugnant and void.

If a man make a feoffment to a Baron and Feme in fee, upon condition, that they shall not alien, to some intent this is good, and to some intent it is void: for to restrain an alienation by feoffment, or alienation by deed, it is good, because such an alienation is tortious and voidable: but to restrain their alienation by Fine is repugnant and void, because it is lawful and maintainable. 10.H.7.11.13 H.7.23. Lib.6.41.b.in Sir Anthony Mildmays case, ubi supra.

It is said, that if a man infeoffe an Infant in fee, upon condition, that he shall not alien, this is good to restrain alienations during his minority, but not after his full age.

It is likewise said, that a man by licence may give land to a Bishop and his Successors, or to an Abbot and his Successors, and adde a condition to it, that they shall not without the consent of their Chapiter or Covent, alien, because it was intended a Mortmain, that is, that it should for ever continue in that Ses or house, for that they had it en auter droit, for religious and good uses. Doctor & Student 124.

¶ *Lestatute de W. 2. cap. 1.* Hereby it appeareth, that whatsoever is prohibited by the intent of any Act of Parliament, may be prohibited by condition, as hath been said. 10.H.7.11 Doct.&Stud. 124.13.H.7.23.

Sect. 363.

¶ Car il est prove per les parols compriſes en meſme Leſtatute que la volūr del donor en tiels cases serroit obserū, et quant le Tenant en le Taile fait tiel diſcontinuāce, il fait le contrarie a ceo, &c. Et auxy en estates en l'taile dascun Tenements, quant l'reverſion de fee ſimple, ou remainder en fee ſimple eſt en auters perſons quant tiel diſcontinuanc̄ ē fait, donques le fee ſimple

FOr it is proved by the words compriſed in the ſame ſtatute, That the will of the Donor in ſuch caſes ſhall be obſerved, and when the Tenant in Tail maketh ſuch diſcontinuance, he doth contrary to that, &c. And alſo in eſtates in Tail of any Tenements, when the Reverſion of the fee ſimple, or the remainder of the fee ſimple is in other perſons, when ſuch diſcontinuance is made, then the fee ſim-

¶ *Quant le reverſion ou rem' en fee eſt en auters perſons.* But the caſe that a Man make a gift in tail to A. the remainder to him and to his heirs, upon condition that he ſhall not alien, as to the ſtate tail the condition is good, for ſuch alienation is prohibited, as hath been ſaid, by the ſaid Statute. But as to the Fee ſimple, ſome ſay it is repugnant and void, for the reaſon that Littleton hath yielded: and therefore ſome are of opinion, that this is a good Condition, and ſhall defeat the alienation for the eſtate tail only, and leave the Fee ſimple in the alienee, for that the Condition did in Law extend only to the eſtate tail, and not to the remainder. 11.H.7.6.13.H.7.23.24. Dyer 2.& 3.Phil.& Ma. 127.b.

¶ *Encounter le profit*

ſit de ſes Iſſues. Hereby it appeareth, that to reſtrain tenant in tail from alienation againſt the profit of his Iſſues, is good, for that agreeth with the will of the Donor, & the intent of the Statute. (a)

(a) 46. E. 3. 4.

But a gift in tail may be made upon condition, That Tenant in tail, &c. may alien for the profit of his iſſues, and that hath been holden to be good, and not reſtrained by the

en le remainder eſt diſcontinue. Et pur ceo que l' Tenant en taile ne ſerr̄ tiel choſe encounter le profit d̄ ſes iſſues & bon̄ droit, tiel condition eſt bon̄ come eſt avantdit, &c.

ple in the remainder is diſcontinued. And becauſe Tenant in Tail ſhall do no ſuch thing againſt the profit of his iſſues, and good right, ſuch Condition is good, as is aforeſaid, &c.

the ſaid Statute, and ſeemeth to agree with the reaſon of Littleton, becauſe in that caſe, Voluntas Donatoris obſervetur, &c. and it muſt be for the profit of the iſſues.

Sect. 364.

22. H. 7. 11.

¶ *Alienont &c. Et auxy ſi touts les Iſſues ſoient morts, &c.* Note Littleton purpoſely made parcel of the Condition in the Copulative, that the tenant in tail ſhould alien, &c. For if a gift in tail be made to a man and to the heirs of his body, and if he die without heirs of his body, that then the Donor and his heirs ſhall re-enter, this is a void Condition, for when the iſſues fail, the eſtate determineth by the expreſs limitation, and conſequently the adding of the condition to defeat that which is determined by the limitation of the eſtate, is void, and in that caſe the wife of the donee ſhall be endowed, &c. And therefore Littleton to make the Condition good, added an alienation, which amounted to a wrong, & he reſtrained not the alienation only, (for then preſently upon the alienation the donor, &c. might re-enter & defeat the eſtate tail)

¶ Item home poit doner Terres en taile, ſur tiel condition, que ſi le tenant en le Taile ou ſes heirs alienont en fee, ou en taile, ou pur terme dauter vie, &c. et auxy que ſi touts iſſues beignants del Tenant en le taile ſoient morts ſans Iſſue, que adonques un̄ lirroit al donor et a ſes heires de entrer, &c. Et per tiel voy le droit de le taile poet eſtre ſalve apres diſcontinuance al iſſue en le taile, ſi alcun y ſoit, iſſint que per voy dentre del Donor, ou de ſes heires le taile ne ſerr̄ my defeat per tiel condition: Quære hoc. Et uncore ſi le Tenant en l' taile en ceo caſe, ou ſes heires font alcun diſcontinuance, celuy en le reverſion ou ſes heires, apres ceo que le taile eſt determine, pur default de iſſue, &c. poyent entrer

ALſo a man may give lands in Tail upon ſuch condition, that if the Tenant in Tail or his Heirs alien in fee or in tail, or for term of another mans life, &c. and alſo that if all the Iſſue coming of the Tenant in Tail, be dead without Iſſue, that then it ſhall be lawful for the Donor and for his heirs to enter, &c. And by this way the right of the tail may be ſaved after diſcontinuance, to the iſſue in tail, if there be any: ſo as by way of entry of the Donor or of his heirs, the tail ſhall not be defeated by ſuch condition: *Quære hoc.* And yet if the tenant in tail in this Caſe, or his heirs, make any diſcontinuance, he in the reverſion or his heirs, after that the Tail is determined for default of Iſſue, &c. may enter into

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en le terre per force de meſme le condition, & ne ſerront my cohert de ſuer briefe de formdon en le reverter.

the Land by force of the ſame condition, and ſhall not be compelled to ſue a Writ of Formedon in the reverter.

but added, and die without iſſue, to the end that the right of the eſtate in tail might be preſerved, and not defeated by the Condition, but might be recovered again by the iſſue in tail in a Formedon.

And Littleton expreſſly ſaith, that the Donor and his heirs after the diſcontinuance, and after that the eſtate tail is determined, may re-enter, which is the intention and true meaning of Littleton in this place. And where it is ſaid in this Section (Quære hoc) this is added by ſome that underſtood not this caſe, and is not in the original.

Note, that in a condition conſiſting of divers parts in the conjunctive, as here in the caſe of Littleton, both parts muſt be performed, according to the old rule, (a) Si plures conditiones aſcriptæ fuerunt donationi conjunctim omnibus eſt parendum & ad veritatem copulative requiritur quod utraque pars ſit vera. But otherwiſe it is when the condition is in the disjunctive, for the ſame Author in that caſe ſaith, Si diviſim cuilibet, vel alteri eorum ſatis eſt obtemperare. Et in disjunctivis ſufficit alteram partem eſſe veram. What then if the condition or limitation be both in the conjunctive and disjunctive: as if a man make a leaſe to the husband and wife for the term of one and twenty years, if the husband and wife or any child between them ſo long ſhall live, and then the wife dieth without iſſue; ſhall the leaſe determine, or continue during the life of the husband? And the anſwer is that it ſhall continue, for the disjunctive referreth to the whole, and disjoineth not only the latter part, as to the Child, but alſo to the Baron and Fem, ſo as the ſenſe is, if the Baron, Fem, or any Child ſhall ſo long live.

(a) Bracton lib. 2. fo. 19. vid. Pl. Com. 76. in Wimbeſhes caſe. & fo. 107. in Fulmerſtons caſe. Bracton ubi ſupra.

So it was adjudged in Communi Banco paſch. 30. Eliz. inter Baldwyn & Cocke commonly called Trupennies caſe.

(b) And ſo it is if an uſe be limited to certain perſons, until A. ſhall come from beyond Sea, and attain unto his full age, or dye, if he doth come from beyond Sea, or attain to his full age, the uſe doth ceaſe.

(b) Hill. 35. Eliz. en treſpaſſe per le Seignior Mordant vers George Vaux ſo adjudged in the Kings Bench.

Sect. 365.

¶ Item, home ne poit pleder en aſcun action, que eſtate fuit fait en fee, ou en fee taile, ou pur terme de vie, ſur condition, ſi ne voucha un record de ceo, ou monſtra un eſcript ſouth ſeale, prevant meſme la condition. Car il eſt un common erudition, que home per plee ne defeatera aſcun eſtate d franktenement per force daſcun tiel condition ſinon que il monſtra le proofe de condition en eſcript, &c. ſi

ALſo a man cannot plead in any action, that an eſtate was made in fee, or in fee tail, or for term of life upon Condition, if he doth not vouch a Record of this, or ſhew a writing under Seal, proving the ſame Condition. For it is a common learning, that a man by plea ſhall not defeat any eſtate of freehold by force of any ſuch Condition, unleſs he ſheweth the proof of the condition in writing, &c. unleſs it be

¶ EN *aſcun action.* In the action real, perſonal, or mixt, if a condition be pleaded to defeat a freehold, it is regularly true, that a Deed muſt be ſhewed forth (a) in Court. And the reaſon why the deed ſhall be ſhewed forth to the Court is, for that to every deed there be two things requiſite, the one that it be ſufficient in law, and this is called the legal part, and therefore the judgment of that belongeth to the Judges of the law: the other concerns matter of fact, as ſealing and delivery, and this belongs to the Jurors. And becauſe every Deed ought to approve it ſelf, and be proved by others too; it muſt approve it ſelf upon the ſhewing of it forth in Court in two manners.

39. E. 3. 22. 4. E. 4. 35. 2. 9. E. 4. 25. b. 26. 2. 6. H. 7. 8. b. 11. H. 7. 22. b. 7. H. 6. 7. 14. H. 8. 22. b. 28. Aſſ. p. 1.

(a) Lib. 10. fol. 92. Doct. Layfields caſe. 7. E. 3. 57. 25. E. 3. 41. 41. E. 3. 10. acc.

First, as to the compoſition of the words, that it be ſuf-

ſufficient in law, and that the Court ſhall adjudge.

Secondly, of ancient time if the Deed appeared to be raſed or interlined in places material, the Judges adjudged upon their view, the Deed to be void. But of latter time, the Judges have left that to the Jurors to try whether the raſing or interlining were before the delivery.

45.E.3.21.a. And there is a difference between a rent, and a re-entry, for upon a gift in tail, or a leaſe for life, a rent may be reſerved without deed, but a Condition with a re-entry, cannot be reſerved in thoſe caſes without deed.

Lib.5.fol.52.53.&c. Pages Caſe. 6.R.2.cap.4. ¶ *Eſcript de ſouth ſeale.* Which Littleton intendeth to be a Deed under Seal.

And well ſaid Littleton, A deed under Seal, for though the Deed be inrolled, yet he cannot plead the inrolment thereof, though it be of record. And though it be exemplified under the great Seal, (b) yet muſt he ſhew forth the Deed it ſelf under Seal, as Littleton here ſaith, and not the exemplification. And ſo when Littleton wrote, no Conſtat, or inſpeximus, of the Kings Letters Patents were available to be ſhewed forth in Court, but the Letters Patents themſelves under Seal. For both the Conſtat and inſpeximus are but exemplifications of the inrolment of the Charters or Letters Patents: and this appeareth by the reſolution of two ſeveral (c) Parliaments, one holden in the third and fourth year of King Edward the ſixth, and the other in the thirteenth year of Queen Elizabeth. But now by thoſe Statutes the exemplification or Conſtat under the great Seal of the inrolment of any Letters Patents made ſince the fourth day of February, Anno 27. H. 8. or after to be made, ſhall be ſufficient to be pleaded and ſhewed forth in Court, aſwel againſt the King, as any other perſon by the Patentees themſelves (whereof there was ſome doubt (d) conceived upon the ſaid ſtatute of E. 6.) and by all and every other perſon and perſons claiming by, from or under them. Which Statutes are general and beneficial, and eſpecially the Act of 13. Eliz. for that extends not only to Lands, Tenements, and Hereditaments, but to every other thing whatſoever, and ought to be favourably conſtrued for advancement of the remedy and right of the ſubject.

(b) Vide 32.H.8.in Patents Br.12.H.7. 12.b.

(c) 3.& 4. E.6. cap.4.& 13 Eliz.cap.6.

(d) Dyer 1.Eliz.167.

The difference between a Conſtat, Inſpeximus, and a Vidimus you may read (e) at large in Pages caſe. But none of them by Law ought to be had, but only of the inrolment of record, and not of a Deed or any other writing that is not of Record, and no Deed, &c. can be inrolled, unleſs it be duly and lawfully acknowledged.

(e) Lib.8.fol.8.in the Princes caſe. Vide Pages caſe ubi ſupra.

¶ *Si nemque ſoit en aſcun eſpecial caſes, &c.* Hereby is implyed that if a Gardian in Chivalry in the right of the heir entreth for a condition broken, he ſhall plead the ſame upon condition without ſhewing of any deed, becauſe his intereſt is created by the Law. And ſo it is (f) of a Tenant by Statute Merchant or Staple, or Tenant by Elegit.

33.E.3.gard.162.20.E.3 darrein preſent, 13.35. H.6.tit. monſtrans des faits 118. (f) 20.H.7.5.

Likewiſe Tenant in Dower ſhall plead a condition, &c. without ſhewing of the Deed. And the reaſon of theſe and the like caſes, is for that the law doth create theſe eſtates, and they come not in by him that entred for the Condition broken, ſo as they might prejudice for the ſhewing of the Deed, but they come to the Land by authority of Law, and therefore the law will uphold them to plead the Condition without ſhewing of it.

5.E.3.27.11.H.4.83. 35.H.6.tit. monſtrans des faits 11.b. 7.H.6. 17.H.3.5.3. H.6. 21.33. H.6 1.14.H.8.8.

(f) But

in ſome ſpecial caſes, &c. But of Chattels reals, as of a Leaſe for years, or of grants of Wards made by Gardians in Chivalry and ſuch like, &c. a man may plead that ſuch Leaſes or grants were made upon Condition, &c. without ſhewing any writing of the Condition. So in the ſame manner a man may do of gifts and Grants of Chattels Perſonals, and of Contracts perſonals, &c.

non que ceo ſoit en aſcuns eſpecial caſes, &c. Mes de chattels reals ſicome de leas fait a terme dans, ou de grants de gards fait per gardeins in chivalrie, & hujuſmodi, &c. home poit pleder que tiels leaſes ou grants fueront faits ſur condition, &c. ſans monſtre aſcun eſcript de le condition. Iſſint en meſme le maner home poit faire de dones & grants de chattels perſonals & de contracts perſonals, &c.

(f) But the Lord by eſcuat albeit his eſtate be created by Law, ſhall not plead a Condition to defeat a freehold without ſhewing of it, becauſe the Deed doth belong unto him. (f) 35. H. 6. ubi ſupra.

A Tenant by the curteſie ſhall not (g) plead a condition made by his wife, and a re-entry for the condition broken without ſhewing the Deed, for albeit his eſtate be created by Law, yet the Law preſumeth that he had the poſſeſſion of the Deeds and evidences belonging to his wife. (g) 35. H. 6. ubi ſupra.

(h) But Leſſees for years, and all others that claim by any conveyance from the party or juſtifie as ſervant by commandment, &c. muſt ſhew the Deed. (h) 14. H. 8. 8. Pl. com. 149

(i) R. brought an Ejectione firmæ againſt E. for Ejecting him out of the Manor of D. which he held for term of years of the demiſe of C. E. the Defendant pleaded that B. gave the ſaid Mannor to P and Katherine his wife in tail, who had iſſue E the Defendant, and after the Donees infeoffed C. of the Manor, upon condition that he ſhould demiſe the Mannor for years to R. the Plaintif, the remainder to the husband and to the wife, &c. C. did demiſe the land to R. the plaintif for years, but kept the reverſion to himſelf, wherefore Katherine after the deceaſe of her husband entred upon the plaintif, &c. for the condition broken, and died, after whoſe deceaſe the land deſcended to E. the iſſue in tail, &c. now defendant, judgment if action, exception was taken againſt this plea, becauſe E. the Def. maintained his entry by force of a condition broken, and ſhewed forth no deed, & the plea was ruled to be good, becauſe the thing was executed, and therefore he need not ſhew forth the Deed. Nota the Defendant being iſſue in tail was remitted to the eſtate tail. (i) 44. E. 3. 22. See after this chapter Section 366.

In a Præcipe quod reddat againſt S. who pleaded that R. was ſeiſed, and infeoffed him in Morgage upon condition of payment of certain money at a day, and ſaid that R. paid the money at the day, and entred judgment of the Writ: exception was taken to this plea, for that he ſhewed forth no Deed of the Condition, and it was ruled that he need not ſhew forth the Deed for two cauſes. 1. That he ought not to ſhew any Deed to the Demandant, becauſe the Demandant is a ſtranger. 2. It might be when R. paid the money, and the condition performed, that the Deed was rebailed to R. and thereupon the plea was adjudged good, and the Writ abated. 11. E. 3. tit. Mans des faits. 175. 45 E. 3. 8.

If land be morgaged upon condition, and the Morgagee letteth the lands for years, reſerving a rent, the condition is performed, the Morgagor re-enters, in an action of debt brought for the rent the Leſſee ſhall plead the condition and the re-entry without ſhewing forth any Deed. 45. E. 3. 8. b Finch.

In an Aſſiſe the Tenant pleads a feoffment of the Anceſtor of the plaintif unto him, &c. the plaintif ſaith that the feoffment was upon condition, &c. and that the condition was broken and pleads a re-entry, and that the Tenant entred and took away the Cheſt in which the Deed was, and yet detaineth the ſame, the plaintif ſhall not in this caſe be enforced to ſhew the Deed. 10. H. 4 9. b. 43. E. 3. Vide 10. E. 3. 41. Simile in dower.

If a woman give lands to a man and his heirs by Deed or without generally, ſhe may in pleading aver the ſame to be Cauſa matrimonii prælocuti, albeit ſhe hath nothing in writing to prove the ſame ſame, the reaſon whereof ſee Sect. 330. 12. E. 1. Feoffments & Faits 114. F. N. B. 205. b. 13. R. 2. Monſtrans des faits 165. 4 E. 4. 35. &c. 11. H. 7. 22. b. 6. H. 7. 8. 9. E. 4. 25. 26. 14. H. 8. 22. b.

¶ *Mes des chattels reals ſicome leaſe fait a volunt a terme des ans, &c.* This is apparent.

Sect. 366.

¶ Item coment que home en accun action ne poit pleder un condition que touche & concerna franktenement launs monſtrer eſcript de ceo, come eſt avantdit, uncore home poit eſtre aide ſur tiel condition per verdict de xii. hões

ALſo albeit a man cannot in any action plead a condition which toucheth & concerns a freehold, without ſhewing writing of this as is aforeſaid, yet a man may be aided upon ſuch a condition by the verdict of 12 men taken at large in an aſſiſe

¶ *Verdit* or *verdict de* 12 *homes.* Veredictum quaſi dictum veritatis, as Judicium eſt quaſi juris dictum. Et ſicut ad quæſtionem juris, non reſpondent juratores ſed judices: ſic ad quæſtionem facti non reſpondent judices ſed juratores. For Jurors are to try the fact, and the Judges ought to judge according to the Law that riſeth upon the fact. Lib. 8 fo. 155. Lib. 9. fo. 13. Lib. 11. fo. 10.

fact, for Ex facto jus oritur.

¶ *Priſe a large.* There be two kinds of verdicts; viz. one general, and another at large or especial. As in an Aſſiſe of Novel diſſeiſin brought by A. againſt B. the Plaintif makes his plaint, Quod B. diſſeiſivit eum de 20 acris terræ cum pertinentiis, the Tenant pleads, Quod ipſe nullam injuriam ſeu diſſeiſinam præfato A. inde fecit, &c. the recognitors of the Aſſiſe do find Quod prædict. A. injuſte & ſine judicio diſſeiſivit prædict. B. de prædict. 20 acris terræ cum pertinent' &c. This is a general verdict. The like law it is if they find it negatively. And Littleton here putteth a caſe of a Verdict at large or a ſpecial Verdict, and it is therefore called a ſpecial Verdict or a Verdict at large, becauſe they find the ſpecial matter at large, and leave the judgment of law thereupon to the Court, of which kind of verdict it is ſaid, (l) Omnis concluſio boni & veri judicii ſequitur ex bonis & veris præmiſſis & dictis Juratorum.

(l) Trin. 33. E. 1. Coram Rege Not. in Theſaur.

And though Littleton here puts his caſe of a Verdict at large upon a general iſſue (which in the caſe he puts it was neceſſary for the Tenant to plead) yet when iſſue is joyned upon ſome ſpecial point, the Jury, as ſhall be ſaid hereafter in this Section, may find the ſpecial matter if it be doubtful in Law, for as much doubt may ariſe upon one point upon the ſpecial iſſue as upon the general iſſue. And as a ſpecial verdict may be found in common

43. Aſſ. 31. Stanf. pl. cor. 164. 165. 3. E. 3. coron. 284. 286. 287. 44. E. 3. 44. 41. E. 3. Coron. 451.

priſe a large en Aſſiſe de Novel diſſeiſin, ou en aſcun auter action, lou les Juſtices voilent prender le verdict de xii Jurors a large. Sicome mittomus q̃ home ſeiſie de certaine terre en fee, leſſa meſm̃ la terre a un auter pur terme de vie ſans fait, ſur condition d̃ render al leſſor un certaine rent, & pur default de paiment un re-entrie &c. per force de quel le leſſee eſt ſeiſie come de franktenement, & puis l' rent eſt aderere, p̃ que le leſſor enter en la fee, & puis le leſſee arraigne un Aſſiſe de Novel diſſeiſin, de la terre envers le leſſor, le quel plead q̃ il fiſt nul tort, ne nul diſſeiſin̄, et ſur ceo laſſiſe ſoit priſe, en ceſt caſe les Recognitors del aſſiſe poyent dire et render a les Juſtices lour verdict a large ſur tout le matter, come adire que le defendant fuit ſeiſie de la terre en ſon demeſn come de fee, et iſſint ſeiſie meſme la terre leſſe al plaintife pur terme de ſa vie, rendãt al leſſour tiel annuel rent patable a tiel feaſt, &c. ſur tiel condition, que ſi le rent fuit aderere a aſcun tiel feaſt a que

of *Novel diſſeiſin*, or in any other action where the Juſtices will take the verdict of 12 Jurors at large. As put the caſe, a man ſeiſed of certain land in fee letteth the ſame land to another for term of life without deed, upon condition to render to the leſſor a certain rent, and for default of payment, a re-entry, &c. by force whereof the leſſee is ſeiſed as of freehold, and after the rent is behind, by which the leſſor entereth into the land, and after the leſſee arraign an Aſſiſe of *Novel diſſeiſin* of the land againſt the leſſor, who pleads that he did no wrong nor diſſeiſin, and upon this the Aſſiſe is taken; in this caſe the Recognitors of the Aſſiſe may ſay and render to the Juſtices their verdict at large upon the whole matter, as to ſay that the defendant was ſeiſed of the land in his demeſn as of fee, and ſo ſeiſed, let the ſame land to the plaintif for term of his life, rendring to the leſſor ſuch a yearly rent payable at ſuch a feaſt, &c. upon ſuch condition that if the rent were behind at any ſuch feaſt at which

doit

doit eſtre pay, donqꝛs bien lirroit al leſſoꝛ dentrer, &c. per force d̄ quel leaſe le plaintife fuit ſeiſie en ſon demeſne come de franktenement, et que puis apꝛes le rent fuit aderere a tiel feaſt, &c. per que le leſſoꝛ entra en le terre ſur le poſſeſſion le leſſee et pꝛieroit le diſcretion de les Juſtices, ſi ceo ſoit un diſſeiſin fait al plaintife ou nemy, donque p̄ ceo que appiert a les Juſtices, que ceo fuit nul diſſeiſin fait al plaintife, entant que lentrie de le leſſour fuit congeable ſur luy; les Juſtices doyent doner judgment q̄ le plaintife ne pꝛendꝛa riens per ſon bꝛiefe daſſiſe. Et iſſint en tiel cas le leſſoꝛ ſerra aide, et uncoꝛe nul eſcripture unques fuit fait del condition. Car cibien que les Juroꝛs poient aver conuſance de le leaſe, auxybien il poiēt aver conuſance de le condition que fuit declare et rehearſe ſur le leas.

it ought to be paid, then it ſhould be lawful for the leſſor to enter, &c. by force of which leaſe the Plaintif was ſeiſed in his demeſn as of freehold, and that afterwards the rent was behind at ſuch a feaſt, &c. by which the leſſor entred into the land upon the poſſeſſion of the leſſee, and prayed the diſcretion of the Juſtices, if this be a diſſeiſin done to the Plaintif or not. Then for that it appeareth to the Juſtices that this was no diſſeiſin to the plaintif, inſomuch as the entry of the leſſor was congeable on him; the Juſtices ought to give judgment that the Plaintif ſhall not take any thing by his writ of Aſſiſe. And ſo in ſuch caſe the leſſor ſhall be aided, and yet no writing was ever made of the condition. For aſwell as the Jurors may have conuſance of the leaſe, they alſo as well may have conuſance of the condition which was declared and rehearſed upon the leaſe.

Pleas, ſo may it alſo be found in Pleas of the Crown, or criminal cauſes that concern life or member.

A verdict finding matter incertainly or ambiguouſly is inſufficient, and no judgment ſhall be given thereupon, as if an Executor plead Pleinment adminiſtre, and iſſue is joyned thereupon, and the Jury find, that the Defendant have goods within his hands to be adminiſtred, but find not to what value, this is incertain and therefore inſufficient.

40.E.3.15.20.E.3.2-mendment 57.18.E.2.49 in Ceſſavit.30.E 3.23. 7.H.4.39.

A Verdict that finds part of the iſſue, and finding nothing for the reſidue, this is inſufficient for the whole, becauſe they have not tried the whole iſſue wherewith they are charged. As if an information of intruſion be brought againſt one for intruding into a meſuage, and 100 acres of land, upon the general iſſue the Jury find againſt the Defendant for the land, but ſaith nothing for the houſe, this is inſufficient for the whole, and ſo was it twice adjudged, (m) But if the Jury give a verdict of the whole iſſue, and of more, &c. that which is more is ſurpluſage, and ſhall not (a) ſtay judgment, for Utile per inutile non vitiatur, but neceſſary incidents required by law the Jury may find.

17.E.3.47.18.E.3.48. 22.E.3.1.18.E.3.56. 15 E.3. Judgment. 58. 2.H.5.3.7.H.6.5. 7.E.4.24.28.H.6.10.

(m) Hill. 25. Eliz. in a writ of Error between Brace and the Queen in the Exchequer Chamber. Mich.28. & 29.Eliz. inter Gomerſal & Gomerſal in account in the Kings Bench.

(a) 32.E.3. Ceſſavit 25.

Vide Sect.484.485.

If the matter and ſubſtance of the iſſue be found, it is ſufficient, as Littleton himſelf ſaith hereafter.

Vide Sect.58.13.E.3. garr.26.15.E.3.Aſſ.322 17.E.3.6.18.Aſſ.2. 35.Aſſ.8.

(b) 1.H.4.6.b. 27.H.8. 22.b.Pl.Com.515. Lib.4.f.52.Rawlins caſe & ibid.Pledols caſe. Hill.31. Eliz. between Sutton & Dicons in the Common place, the caſe of the Leaſe for years by Deed indented. 34.E.3.Droit 29.

Eſtoppels which bind the intereſt of the Land, as the taking of a Leaſe of a mans own land by Deed indented, and the like, being ſpecially found by the Jury, the Court ought to judge accoꝛding to the ſpecial matter, foꝛ albeit Eſtoppels regularly muſt be pleaded and relied upon by an apt concluſion, and the Jury is ſwoꝛn ad veritatem dicendam, yet when they find veritatem facti, they purſue well their oath, and the Court ought to adjudge accoꝛding to Law. (b) So may the Jury find a warranty being given in evidence, though it be not pleaded, becauſe it bindeth the right, unleſs it be in a Writ of Right, when the Miſe is joyned upon the meer right.

(c) After

(c) After the verdict recorded, the Jury cannot vary from it, but before it be recorded they may vary from the first offer of their verdict, and that verdict which is recorded shall stand: also they may vary from a privy verdict.

(c) 7. R. 2. Corone. 108. Pla. Com. Fremans case 21 E 11 H. 4. 2. 20. Ass. 12 16. Ass. 16. 22. Ass. 23. 5 H 7. 22.

In issue found by verdict shall always be intended true until it be reversed by attaint, and thereupon upon the attaint no Supersedeas is grantable by Law.

If the Jury after their evidence given unto them at the Bar, do at their own charge eat or drink either before or after they be agreed on their verdict, it is finable, but it shall not avoid the verdict: but if before they be agreed on their verdict, they eat or drink at the charge of the plaintif, if the verdict be given for him, it shall avoid the verdict: but if it be given for the Defendant, it shall not avoid it, & sic è converso. (d) But if after they be agreed on their verdict they eat or drink at the charge of him for whom they do pass, it shall not avoid the verdict.

Pasch 24 H. 8. of the Report of Justice Spilman in the Kings Bench. 11. H. 4 17. 35. H. 6. Examin. 17 29 H. 8. 37. Dier. 35 H 8 55. 4. & 5. Eliz. 218. 14. H 7 1 20. H. 7. 3

(d) Pasch 6. E 6. in the Common place.

(e) If the plaintif after evidence given, and the Jury departed from the Bar, or any for him, do deliver any Letter from the plaintif to any of the Jury concerning the matter in issue, or any Evidence, or any escrowl touching the matter in issue, which was not given in Evidence, it shall avoid the verdict, if it be found for the plaintif, but not if it be found for the defendant, & sic è converso. But if the Jury carry away any writing unsealed, which was given in evidence in open Court, this shall not avoid their verdict, albeit they should not have carried it with them.

(e) 11. H 4. 16. 17. 3. Mar. Jurors Br. 8. Vide Dier ub. supra.

By the Law of England a Jury after their Evidence given upon the Issue, ought to be kept together in some convenient place, without meat or drink, fire or candle, which some Books (f) call an imprisonment, and without speech with any, unless it be the Bailif, and with him only if they be agreed. After they be agreed they may in causes between party and party give a verdict, and if the Court be risen, give a privy verdict before any of the Judges of the Court, and then they may eat and drink, and the next morning in open Court they may either affirm or alter their privy verdict, and that which is given in Court shall stand. But in criminal cases of life or member, the Jury can give no privy verdict, but they must give it openly in Court. And hereby appeareth another division of verdicts, viz. a publick verdict openly given in Court, and a privy verdict given out of the Court before any of the Judges as is aforesaid.

Pasch. 6. E. 6. ubi supra.

(f) 24. E. 3. 75.

A Jury sworn and charged in case of life or member, cannot be discharged by the Court or any other, but they ought to give a verdict. And the King cannot be Non-suit, for he is in Judgment of Law ever present in Court: but a common person may be Nonsuit.

21. E. 3. 18.

¶ *En Assise de Novel disseisin ou en ascun auter action, &c.* Here it is to be observed, That a special verdict, or at large, may be given in any action, and upon any issue be the issue general or special: and albeit there be some contrary opinions in our Books, yet the Law is now settled in this point.

W. 2. cap. 30. 7. H. 4. 11. 8. E. 4. 29. 9. H. 7. 13. 23. H. 8. tit. verdit. Br. 85 11. Eliz. Dier 283. 284. 2. E. 3. itine. North 284 286. 4. Ass. 31. 26. H 8. 5 44. E. 3. 44. F tit. coron. 94. 44. Ass. 17. 45. E. 3. 20. Pl. Com. 92. 9. H. 7. 3. Vide Lib. 9. 12. 13. Dowmans case. And see the e many other Authorities.

¶ *Per que le Lessor entra.* Here it appeareth that the condition is executed by re-entry, and yet the Lessor after his re-entry shall not by the opinion of Littleton, plead the condition without shewing the Deed, because he was party and privy to the Condition, for the parties must shew forth the Deed, unless it be by the act and wrong of his adversary, as hath been said, (m) but an estranger which is not privy to the condition, nor claimeth under the same, as in the cases abovesaid appeareth, shall not after the condition is executed in pleading, be inforced to shew forth the Deed: and by this diversity all the Books and authorities in Law which seem to be at variance are reconciled. See also for this matter the Section next following.

(m) See more before in this Chapter, Sect. 365.

¶ *Les Recognitors del Assise poient dire, &c.* Here it appeareth that the Jurors may find the fact, albeit the Deed be not shewed in evidence, and the rather for that the condition upon the livery (as hath been said) is good, albeit there be no Deed at all.

19. Ass. 9. 21. Ass. 28. 17. Ass. 20 31. Ass. 21. 2. Ass. 2. 39. E. 3. 28. 44. E. 3. 22. 10. H. 4. 9 7. H 5 5 9 E. 4. 26. 18 E. 4. 12. 15. E. 4. 10. 17. 11. H 7. 22

¶ *Et prieront le discretion des Justices.* That is to say, They (having declared the special matter) pray the discretion of the Justices, which is as much to say, as, That they would discern what the Law adjudgeth thereupon, whether for the Demandant, or for the Tenant: for as by the authority of Littleton, Discretio est discernere per legem, quid sit justum, that is, to discern by the right line of law, and not by the crooked cord of private opinion, which the vulgar call Discretion: Si à jure discedas, Vagus eris, & erunt omnia omnibus incerta: and therefore Commissions that authorise any to proceed, Secundum sanas discretiones vestras, is as much to say, as, Secundum Legem & consuetudinem Angliæ.

Lib. 10 f. 4. case de Sewers.

¶ *Car cibien comme les Jurors poient aver connusance, &c.* Hereby it appeareth That they that have Conusance of any thing, are to have Conusance also of all Incidents and Dependants thereupon, for an Incident is a thing necessarily depending upon another.

If

If a Deed be made and dated in a foreign Kingdom, of lands within England, yet if Livery and Seisin be made, secundum formam cartæ, the land shall pass, for it passeth by the Livery. 1 E. 3. 17. in Gracyes case.

Sect. 367.

¶ En meisme le manner est de Feoffment en Fee, ou done en le Taile sur Condition, coment que nul escripture unque fuit fait de ceo. Et icome est dit de verdict a large en Assise, &c. En meisme le manner est en briefe dentr̄ foundue sur disseisin, et en touts autes actions, ou les Justices voylent prender le verdict a large y la ou tiel verdict a large est fait, la manner del entrie entire est mis en lissue, &c.

IN the same manner it is of a Feoffment in Fee, or a Gift in tail, upon condition, although no Writing were ever made of it. And as it is said of a Verdict at large in an Assise, &c. In the same manner it is of a Writ of Entry founded upon a disseisin, and in all other Actions where the Justices will take the Verdict at large, there where such verdict at large is made, the manner of the whole entry is put in the Issue, &c.

¶ AND it is to be observed, That the Court cannot refuse a special verdict, if it be pertinent to the matter put in Issue. See the Section next preceding.

¶ *Verdict a large.* It is called a verdict at large because it findeth the matter at large, and leaves it to the judgment of the Court: or it is called a special verdict, because it findeth the special matter, &c. So as hereby it appeareth, That a Verdict (as hath been said) is twofold, viz. a Verdict at large, or a special Verdict, (which is all one) whereof Littleton here speaketh; and a general Verdict that is generally found according to the Issue, as if the Issue be not guilty, to find the party guilty or not guilty generally, & sic de cæteris. There is also a Verdict given in open Court, and a priby Verdict given out of court before any of the Judges of the Court, so called because it ought to be kept secret and priby from each of the parties, before it be affirmed in Court. See the Section next following. See the next preceding Section.

Sect. 368.

¶ Item en tiel case lou Lenquest poit dire lour verdict a large, ils voilent p̄nd sur eux le Conusance de la ley sur le matter, ils poient dire lour verdict generalment, come est mis en lour charge, cōe en le case avantdit, ils poient bien dire que le Lessor ne disseisa pas l' Lessee, ils voilent, &c.

ALso in such case where the Enquest may give their verdict at large if they will take upon them the knowledge of the Law upon the matter, they may give their verdict generally as is put in their charge, as in the case aforesaid they may well say, That the lessor did not disseise the Lessee, if they will, &c.

¶ ALthough the Jury if they will take upon them (as Littleton here saith) the knowledge of the law, may give a general verdict, yet it is dangerous for them so to do, for if they do mistake the law, they run into the danger of an Attaint, therefore to find the special matter is the safest way where the case is doubtful.

Sect.

Sect. 369.

¶ *PVR ceo que il nad aſcun eſcripture de ceo.* Hereby it alſo appeareth, That albeit the condition was executed by re-entry, yet the leſſor cannot plead it without ſhewing of a Deed. But of this matter ſufficient hath been ſaid before in the two next preceding Sections.

¶ *Quel eſt bone plea en Barre.* In a caſe where there have been ſome variety of opinions in our Books, Littleton herecleareth the doubt, and that upon a good ground. For he himſelf reporteth in our Books, That it was holden by all the Juſtices of England, That a leaſe for life, the reverſion to the Plaintif, was a good bar in an aſſiſe, and alſo that a Leaſe for years, the reverſion to the Plaintif, might be pleaded in an Aſſiſe: and ſo of a Feoffment in Fee with warrantie. And herein the diverſity of pleading is to be obſerved, for in the caſe here put by Littleton of a Leaſe for life, the Tenant ſhall plead it in Bar. But in a caſe of a leaſe for

18.E.4.10.12.Aſſ.38.
10.Aſſ.16.26.H.6.Bar.9
38.Aſſ.26.4 31.Aſſ.26.
39.Aſſ.3.43.Aſſ.18.
44 Aſſ.3,18.E.3.Aſſ.77.
31.E.3.ib.97.18.Aſſ.22.

4.Eliz. Dyer 207.
8.Eliz. Dyer 246.

¶ Item en meſme le caſe ſi l'caſe fuit tiel, que apres ceo que le Leſſor avoit enter pur default de payment, &c. que le Leſſee uſt enter ſur le leſſor & luy diſſeiſt, en ceſt caſe ſi le Leſſor arraigne un Aſſiſe envers l'Leſſee, le Leſſee luy puit barre de laſſiſe. Car il poit pleader envers luy ẽ bar, coment le Leſſor que eſt Plaintife fiſt un leaſe al Defendant pur terme de ſa vie, ſavant le reverſion al Plaintife, quel eſt bone plea en Bar, entant que il conuſt l'reverſion eſtre al Plaintife, en ceſt caſe le Plaintife nad aſc̃ matt̃ de luy ayd̃ forſque le condition fait ſur le Leas, et ceo il ne poet pleader pur ceo que il nad aſcun eſcripture de ceo. Et entant que il ne poet reſponder al bar̃, il ſerra bar̃. Et iſſint en ceſt caſe poyes deier que home eſt diſſeiſe, & uncore il navera Aſſiſe. Et uncore ſi le Leſſee ſoit plaintife, et le Leſſor Defendant, il barrera le Leſſee per verdit daſſiſe, &c. Mes en ceſt caſe lou le Leſſee eſt Defendant, ſi il ne voil' plead le dit plea en Barre, mes plead nul tort, nul diſſeiſin, donq̃s le leſſor recouã p aſſiſe, Cauſa qua ſupra.

ALſo in the ſame caſe, if the caſe were ſuch, That after that, that the Leſſor had entred for default of payment, &c. that the Leſſee had entred upon the Leſſor, and him diſſeiſed; in this caſe if the Leſſor arraign an Aſſiſe againſt the Leſſee, the Leſſee may bar him of the Aſſiſe: for he may plead againſt him in bar, how the Leſſor who is pl', made a leaſe to the defen. for term of his life, ſaying the reverſion to the Pl' which is a good plea in bar inſomuch as he acknowledges the reverſion to be to the Pl'. In this caſe the plaintif hath no matter to aid himſelf, but the condition made upon the leaſe & this he cannot plead, becauſe he hath not any writing of this: and inaſmuch as he cannot anſwer the bar he ſhall be barred. And ſo in this caſe you may ſee that a man is diſſeiſed, & yet he ſhall not have aſſiſe. And yet if the leſſee be pl' and the leſſor def. he ſhall bar the leſſee by verdict of the Aſſiſe, &c. but in this caſe where the leſſee is def. if he will not plead the ſaid plea in bar, but plead *nul tort, nul diſſ.* then the leſſor ſhall recover by aſſiſe, *Cauſa qua ſupra.*

years,

years, or of an eſtate of Tenant by Statute or Elegit, the defendant ſhall not plead in bar, as to ſay, Aſſiſa non, &c. but juſtifie by force of the Leaſe, &c. and conclude, & iſſint ſans tort. And if the Tenant of the Freehold be not named, he ſhall plead, Nul tenant de franktenement noſme en le brief: and in the caſe of the feoffment with warranty, he muſt rely upon the warranty.

Sect. 370.

¶ Item, pur ceo q̄ tielx conditions ſont plus communement mis & eſpecifies en faits endentes, alcun petit choſe ſerra icy dit (a toy mon fits) de endenture & de fait Poll concernants conditions. Et eſt aſcavoir, que ſi lendenture ſoit bipartite, ou tripartite, ou quadripartite, touts les partes de lendenture ne ſont que un fait en ley, & cheſcun part de lendenture eſt de auxy grande force et effect, ſicome touts les parts enſemble.

AND for that ſuch Conditions are moſt commonly put and ſpecified in Deeds indented, ſomewhat ſhall be here ſaid (to thee my ſon) of an Indenture, and of a Deed Poll concerning Conditions. And it is to be underſtood, that if the Indenture be bipartite, or tripartite, or quadripartite, all the parts of the Indenture are but one Deed in Law, & every part of the Indenture is of as great force and effect, as all the parts together be.

¶ *EN faits endentes.* Thoſe are called by ſeveral names, as Scriptum indentatum, carta indentata, Scriptura indentata, Indentura, Literæ indentatæ. An Indenture is a writing containing a Conveyance, Bargain, Contract, Covenants or Agreements between two or more, and is indented in the top or ſide anſwerable to another that likewiſe comprehendeth the ſelf ſame matter, & is called an Indenture, for that it is ſo indented, & is called in Greek συμγεαφον. Vid. Sect. 219.

If a deed beginneth, Hæc Indentura, &c. and in troth the Parchment or Paper is not indented, this is no indenture, becauſe words cannot make it indented. But if the deed be actually indented, & there be no words of Indenture in the Deed, yet it is an Indenture in law, for it may be an Indenture without words, but not by words without indenting. Lib. 5. fo. 20. Stiles caſe.

¶ *En faits indent.* And here it is to be underſtood, that it ought to be in Parchment or in Paper. For if a writing be made upon a piece of wood, or upon a piece of Linnen, or in the bark of a tree, or on a ſtone, or the like, &c. and the ſame be ſealed & delibered, yet is it no Deed, for a Deed muſt be written either in Parchment or Paper as before is ſaid, for the writing upon theſe is leaſt ſubject to alteration or corruption. 14. E. 3. Ley 79. 4. E. 2. Fines 116. 4. E. 2. Ley 68. 2. R. 2. Det. 4. 27. H. 6. 9. F.N.B. 122. I.

¶ *Si lendenture ſoit bipartite, ou tripartite, ou quadripartite, &c.* Bipartite is when there be two parts and two parties to the Deed. Tripartite when there are three parts and three parties, and ſo of Quadripartite, Quinquepartite, &c.

¶ *Et de fait poll.* A Deed poll is that which is plain without any indenting ſo called, becauſe it is cut even, or polled, every Deed that is pleaded ſhall be intended to be a Deed poll, unleſs it be alleaged to be indented.

¶ *Touts les parts del endenture ne ſont que un en ley.* If a man by Deed indented, make a gift in tail, and the Donee dyeth without iſſue, that part of the Indenture which belonged to the Donee doth now belong to the Donor, for both parts do make but one Deed in Law. 38. H. 6. 24. 25. 9. H. 6. 35. 35. H. 6. 34. 9. E. 3. 18. 9. E. 4. 18. Pl. Com. 134.

¶ *Et cheſcun part del'indenture eſt de auxy grand force, &c.* This is manifeſt of it ſelf, and is proved by the Books aforeſaid.

It is to be obſerved, that if the Feoffor, Donor, or Leſſor ſeal the part of the Indenture belonging to the Feoffee, &c. the Indenture is good, albeit the Feoffee never ſealeth the Counterpart belonging to the Feoffor, &c.

Sect. 371.

¶ ET ſealance de Indenture eſt en deux maners. Un eſt de faire eux en le tierce perſon. Un auter eſt de faire eux en le primer perſon. Le ſealance en le tierce perſon eſt come en tiel forme.

Hæc Indentura facta inter R. de P. ex una parte, & V. de D. ex altera parte, Teſtatur, quod prædictus R. de P. dedit & conceſſit, & hac præſenti carta indentata confirmavit præfato. V. de D. talem terram, &c. Habendum & tenendum, &c. ſub conditione, &c. In cujus rei teſtimonium partes prædictæ ſigilla ſua præſentibus alternatim appoſuerunt. *Vel ſic*: in cujus rei teſtimonium uni parti hujus Indenturæ penes præfatum V. de D. remanenti, prædict' R. de P. ſigillum ſuum appoſuit, alteri verò parti ejuſdem Indenturæ penes R. de P. remanenti idem V. de D. ſigillum ſuum appoſuit. Dat' &c.

Tiel Endenture eſt appel endenture fait en le tierce perſon, pur ceo que les Verbes, &c. ſont en la tierce perſon. Et tiel forme dendentures eſt de pluis ſure ſealance, pur ceo que eſt pluis communement uſe, &c.

AND the making of an Indenture is in two manners. One is to make them in the third perſon. Another is to make them in the firſt perſon. The making in the third perſon is as in this form.

This Indenture made between R. of P. of the one part, and V. of D. of the other part, witneſſeth, that the ſaid R. of P. hath granted, and by this preſent Charter indented confirmed to the aforeſaid V. of D. ſuch Land, &c. To have and to hold, &c. upon condition, &c. In witneſs whereof the parties aforeſaid to theſe preſents, interchangeably have put their Seals. Or thus: *In witneſs whereof to the one part of this Indenture, remaining with the ſaid V. of D. the ſaid R. of P. hath put his Seal, and to the other part of the ſame Indenture remaining with the ſaid R. of P. the ſaid V. of D. hath put his Seal. Dated, &c.*

Such an Indenture is called an Indenture made in the third perſon, becauſe the Verbs, &c. are in the third perſon. And this form of Indentures is the moſt ſure making, becauſe it is moſt commonly uſed, &c.

9. E. 3. 18. Vid. the Books afore rehearſed.

¶ ET *le feaſance del Indenture eſt en deux maners, &c.* Here is another of our Authors perfect diviſions. In this and the next Section following Littleton doth illuſtrate his meaning, by ſetting down forms and examples which do effectually teach.

Vide 40. E. 3. 2. 7. H. 7. 14 Dier 28. H. 8. 19. Lib. 2. fol. 4. & 5. Godards caſe.

In theſe two forms there are to be obſerved (amongſt other) three general parts of the ſame, viz. the Premiſes, the Habendum, and the In cujus rei teſtimonium. But hereof hath been ſpoken at large, Sect. 1. 4. & 40. for Littleton ſpeaketh not here of the delivery, but only of the Contexture or words of the Deed.

17. Eliz. Dier 342. 1. R. 3 14. H. 6. 28. Bab. 12. H. 4. 12, 30. Aſſ. 31.

¶ *Pur ceo que eſt le pluis communement uſe.* Here it appeareth that which is moſt commonly uſed in Conveyances is the ſureſt way. A communi obſervantia non eſt recedendum, & minime mutanda ſunt quæ certam habuerunt interpretationem. Magiſter rerum Uſus. It is provided by the Statute of 38. E. 3. cap. 4. that all penal Bonds in the third perſon

perſon be void and holden for none, wherein ſome of our Books (d) ſeem to differ, but they being rightly underſtood, there is no difference at all. For the Statute is to be intended of Bonds taken in other Courts out of the Realm, and ſo it appeareth by the preamble of that Act. And it was principally intended of the Courts of Rome, and ſo it appeareth by Juſtice Hankford, in 2. H. 4. in which Courts Bonds were taken in the third perſon. So as ſuch Bonds made out of the Realm, are void, but other Bonds in the third perſon, are reſolved to be good, as well as Indentures in the third perſon, by the opinion of the whole Court in 8. E. 4.

(d) 40. E. 3. 1. 2. H. 4. 10. 8. E. 4. 5.

Sect. 372.

Ile ſealance de Indenture en le primer perſon eſt come en tiel forme. Omnibus Chriſti fidelibus ad quos præſentes literæ indentatæ pervenerint, A. de B. ſalutem in Domino ſempiternam. Sciatis me dediſſe, conceſſiſſe, & hac præſen' carta mea indentata confirmaſſe C. de D. talem terram, &c. *Vel ſic*; Sciant præſentes & futuri, quòd ego A. de B. dedi, conceſſi, & hac præſenti carta mea indentata confirmavi C. de D. talem terram, &c. Habendum & tenendum, &c. ſub conditione ſequenti, &c. In cujus rei teſtimonium tam ego præd' A. de B. quam prædict' C. de D. his Indenturis ſigilla noſtra alternatim oppoſuim'. *Vel ſic*: In cujus rei teſtimonium ego præfatus A. uni parti *hujus* Indenturæ ſigillum meum appoſui, alteri verò parti ejuſdem Indenturæ prædict' C. de D. ſigillum ſuum appoſuit, &c.

THe making of an Indenture in the firſt perſon is, as in this form. *To all Chriſtian people to whom theſe preſents indented ſhall come, A. of B. ſends greeting in our Lord God everlaſting. Know ye me to have given, granted, and by this my preſent Deed indented, confirmed to C. of D. ſuch land, &c.* Or thus: *Know all men preſent and to come, that I A. of B. have given, granted, and by this my preſent Deed indented, confirmed to C. of D. ſuch land, &c. To have and to hold, &c. upon Condition following, &c. In witneſs whereof, aſwell I the ſaid A. of B. as the aforeſaid C. of D. to theſe Indentures have interchangeably put our Seals.* Or thus: *In witneſs whereof, I the aforeſaid A. to the one part of this Indenture have put my Seal, and to the other part of the ſame Indenture, the ſaid C. of D. hath put his Seal, &c.*

HEre Littleton ſets down three forms of deeds indented in the firſt perſon, Brevis via per exempla, longa per præcepta. It is requiſite for every Student to get Preſidents and approved forms not only of deeds according to the example of Littleton, but of Fines, and other Conveyances, and Aſſurances, and eſpecially of good and perfect pleading, and of the right entries, and forms of Judgments, which will ſtand him in great ſtead, both while he ſtudies, and after when he ſhall give counſel. It is a ſafe thing to follow approved preſidents, for Nihil ſimul inventum eſt, & perfectum. Vide Sect. 371.

Sect. 373.

Et il ſemble que tiel endenture que eſt fait en le primer perſon eſt auxy bone en la

ANnd it ſeemeth that ſuch Indenture which is made in the firſt perſon is as good in law as the

ley, come lendenture fait en le tierce person, quant ambideux parties ont a ceo mise lour seals, car si lendenture fait en l' tierce person, ou en le primer person, mention soit fait que le grantor avoit mise solement son seale, & nemy le grantee, donques est lendenture tant solement le fait l' grantor. Mes lou mention est fait que le grantee ad mis son seale a lendenture, &c. donques est lendenture auxy bien le fait le grantee come le fait le grantor. Issint il est le fait dambideux, & auxy chescun part de lendenture est le fait dambideux parties en tiel case.

Indenture made in the third person, when both parties have put to this their Seals, for if in the Indenture made in the third person, or in the first person, mention be made that the Grantor only hath put his Seal, and not the Grantee, then is the Indenture only the deed of the Grantor. But where mention is made that the Grantee hath put to his Seal to the Indenture, &c. then is the Indenture as well the deed of the Grantee as the deed of the Grantor. So is it the deed of them both, and also each part of the Indenture is the deed of both parties in this case.

HEre is to be observed, that albeit the words in this Indenture be only the words of the Feoffor, yet if the Feoffee put his Seal to the one part of the Indenture, it is the Deed of them both. And in this special case to make it the Deed of the Feoffee, it appeareth by Littleton, that mention must be made in the Deed, that he hath put to his Seal, for that he is no way made party to make it, being made in the first person, but only by the clause of putting his Seal thereunto. Otherwise it is of a Deed indented in the third person, as before it appeareth, for there he is made party to the Deed in the beginning. And Littletons rule is true, that every part of an Indenture is the Deed of both parties, for as it hath been said, both parts make but one Deed in Law in that case.

Sect. 374.

SUR *certain condition, &c.* Hereby this (&c.) is implied that the condition in this case doth extend both to the estate for life, & to the remainder, but by special limitation it may extend to any one of them, and not to the other. And albeit he in the remainder is no party to the Indenture (the parties thereunto only being the Lessor and the Tenant for life) yet when he in the remainder entreth and agreeth to have the lands by force of the Indenture he is bound to perform the conditions contained in the In-

ITem si estate soit fait p Indenture a un home pur terme de sa vie, le remainder a un auter en fee sur certain condition, &c. & si le tenant a terme d vie avoit mis son seale al part de lendenture, & puis morust, & il que est en le remainder ent en la terre, per force de son remainder, &c. en cest cas il est tenus de performer touts les conditions compryse en

ALso if an estate be made by Indenture to one for term of his life, the remainder to another in fee upon a certain condition, &c. and if the tenant for life have put his Seal to the part of the Indenture, and after dieth, and he in the remainder entreth into the land by force of his remainder, &c. In this case he is tied to perform all the conditions comprised

len-

lendenture, ſicome le tenant a terme de vie, deboit faire en ſa vie, & uncore celuy en le remainder ne unqes enſeale aſcun part del endenture. Mes la cauſe eſt, que entant que il enter et agreea daber les terres per force del endenture, il eſt tenus de perfozmer les conditions deins meſme lendenture ſil voile aber la terre, &c.

in the Indenture, as the tenant for life ought to have done in his life time, and yet he in the remainder never ſealed any part of the Indenture. But the cauſe is, for that inaſmuch as he entred and agreed to have the lands, by force of the Indenture he is bound to perform the conditions within the ſame Indenture if he will have the land, &c.

denture. And here is alſo a diverſity to be underſtood that any ſtranger to the Indenture may take by way of remainder, but he cannot in this caſe take any preſent eſtate in poſſeſſion, becauſe he is an ſtranger to the Deed.

If A. by Deed indented between him and B. letteth lands to B. for life, the remainder to C. in fee reſerving a rent, tenant for life dieth, he in the remainder entereth into the lands, he ſhall be bound to pay the rent, for the cauſe and reaſon before yielded by Littleton. 50.E.3.22. 3.H.6.26.b.

of Leaſe is ingroſſed between A. of the one part, and D. and R. of the other part, which purporteth a demiſe for years by A. to D. and R. A. ſealeth and delivereth the Indenture to D. and D. ſealeth the Counterpane to A. but R. did not ſeal and deliver it. And by the ſame indenture it is mentioned, that D. and R. did grant to be bound to the plaintif in 20 pound in caſe that certain conditions comprized in the indenture were not perfozmed. And for this 20 pound A. brought an action againſt D only, and ſhewed forth the Indenture. The Defendant pleaded that it is proved by the Indenture that the demiſe by indenture was made to D. and R. which R. is in full life and not named in the Writ, Judgment of the Writ. The Plaintif replied, that R. did never ſeal and deliver the indenture, and ſo his Writ was good againſt D. ſole. And there the counſel of the Plaintif took a diverſity between a rent reſerved which is parcel of the leaſe, and the land charged therewith, and a ſum in groſs, as here the twenty pound is, for as to the rent they agreed that by the agreement of R. to the leaſe, he was bound to pay it, but for the 20 pound that is a ſum in groſs, and collateral to the Leaſe, and not annexed to the land, and groweth due only by the deed, and therefore R. ſaid he was not chargeable therewith, for that he had not ſealed and delibered the Deed. But inaſmuch as he had agreed to the leaſe which was made by indenture he was chargeable by the indenture for the ſame ſum in groſs, and for that R. was not named in the Writ, it was adjudged that the Writ did abate. 38.E.3.8.a. 3.H.6.25.b. Vide 45.E.3.11.12.

¶ *Aver la terre, &c.* Here is implied an ancient maxim of the Law, viz. Qui ſentit commodum ſentire debet & onus, Et tranſit terra cum onere.

Sect. 375.

¶ Item ſi feoffment ſoit fait p fait Poll ſur condition, & pur ceo que le condition neſt pas perfozme, le feoffor entra & hapa la poſſeſſion de le fait Poll, ſi le feoffee pozt un action de cel entrie enders le feoffor, il ad eſte queſtion ſi le feoffor poit pleder le condition per le dit fait Poll encounter le feoffee. Et aſcuns ont dit que non, entant que il

ALſo if a Feoffment be made by deed Poll upon condition, and for that the condition is not performed, the Feoffor entreth and getteth the poſſeſſion of the deed Poll, if the Feoffee brings an action for this entry againſt the Feoffor, it hath been a queſtion if the feoffor may plead the condition by the ſaid deed Poll againſt the feoffee. And ſome have ſaid

ſemble

ſemble a eux que un fait Poll, & le propertie de meſme le fait appertient a celuy a que le fait eſt fait, & nemy a celuy que fit le fait. Et entant que tiel fait ne attient al feoffor, il ſemble a eux que il ne poit pas ceo pleder. Et auters ont dit le contrarie, et ont monſtre divers cauſes. Un eſt, ſi le caſe fuit tiel, que en action perenter eux, ſi le feoffee pleder meſme le fait et monſtre eſt al Court, en teſt cas entant que le fait eſt en Court; le feoffor poit monſtrer al court coment en le fait ſont divers conditions deſtre perfoymes de le part le feoffee, &c. et pur ceo que ils ne ſueront perfoymes, il enter, &c. et a ceo il ſerra reſceive, per m le reaſon quant le feoffor ad le fait en poigne, & ceo monſtra a le court, il ſerra bien reſceive de ceo pleder, &c. et noſment quant le feoffor eſt privie al fait, car covient eſtre privie al fait quant il fit le fait, &c.

he cannot, inaſmuch as it ſeems unto them that a deed Poll and the property of the ſame deed belongeth to him to whom the deed is made, and not to him which maketh the deed. And inaſmuch as ſuch a deed doth not appertain to the feoffor, it ſeems unto them that he cannot plead it. And others have ſaid the contrary, and have ſhewed divers reaſons, one is, If the caſe were ſuch that in an action between them if the feoffee plead the ſame deed, and ſhew it to the Court, in this caſe inſomuch as the deed is in Court, the feoffor may ſhew to the Court how in the deed there are divers conditions to be performed of the part of the feoffee, &c. and becauſe they were not performed, he entred, &c. and to this he ſhall be received. By the ſame reaſon when the feoffor hath the deed in hand, and ſhew this to the court, he ſhall well be received to plead it, &c. and namely when the feoffor is privy to the fait, for he muſt be privy to the deed when he makes the deed, &c.

a Vid. Sect. 170. 302. 340

¶ HEre the latter opinion is clear Law at this day, and is Littletons own opinion (a) as before hath been obſerved.

¶ *Ont monſtre divers cauſes.*

Felix qui potuit rerum cognoſcere cauſas.
Et ratio melior ſemper prævalet.

24 E. 3. 73. 45. E. 3. Monſtrans des faits. 55. (b) 40. Aſſ. 34. lib. 5. 75. b Wymarks caſe. (c) 12. H. 4. 8. 42 E. 3. 27 Wymarks caſe ubi ſup. 38. H. 6. 2. 41. Aſſ. 29. 12. H. 4. 8 7. H. 4. 39. 11. H. 4. 73. 45. E. 3. 11. F. N. B. 243.

¶ *Entant que le fait eſt en Court, &c.* And herewith do agree (b) many Authorities in Law. (c) And if the Deed remain in one Court, it may be pleaded in another Court without ſhewing forth; Quia lex non cogit ad impoſſibilia.

¶ *De part le feoffee, &c.* Here alſo is implied if the condition be to be performed on the part of the Feoffor or by a ſtranger, and it is to be underſtood that when a Deed is ſhewed forth to the Court, the Deed ſhall remain in Court all that Term in the cuſtody of the Cuſtos brevium, but at the end of the Term (if the Deed be not denied) then the Law adjudgeth the Deed in the cuſtody of the party to whom it belongeth, for a mans evidences are as it were the ſinews of his land. But if the Deed be denied, then the Deed in judgment of Law remaineth in court until the plea be determined. The reſt due of this Section needeth no explication.

Sect.

Sect. 376.

¶ Auxy ſi deux homes ſont un treſpas a un auter le quel releaſe a un d eux per ſon fait, touts actions perſonals, & nient obſtant il ſuiſt action d treſpaſs envers lauter, le defendant bien poit monſtrer que le treſpaſſe fuit fait per luy et per un auter ſon companion, et que le Plaintife per ſon fait d il monſtre avant releſſa a ſon companion touts actions perſonals, judgment ſi action, &c. Et uncore tiel fait appertient a ſon companion, & nemy a luy, mes pur ceo que il poit aver advantage p le fait ſi voit monſtrer le fait al Court, il poit ceo bien pleder, &c. Per meſme le reaſon poit le feoffor en lauter cas quant il doit aver advantage per le condition compris deins le fait Poll.

ALſo if two men do a treſpaſs to another, who releaſes to one of them by his deed all actions perſonals, and notwithſtood an action of treſpaſs againſt the other, the defendant may wel ſhew that the treſpaſs was done by him, and by an other his fellow, and that the Plaintif by his deed (which he ſheweth forth) releaſed to his fellow all actions perſonals, and demand the judgment &c. and yet ſuch deed belongeth to his fellow, and not to him, but becauſe he may have advantage by the deed if he will ſhew the deed to the Court, he may well plead this, &c. by the ſame reaſon may the feoffor in the other caſe when he ought to have advantage by the condition compriſed within the deed Poll.

¶ *Si deux homes ſont un treſpaſs a un auter, &c.* Here by this Section it is to be underſtood that when divers do a treſpaſs, the ſame is joint or ſeveral at the will of him to whom the wrong is done, yet if he releaſe to one of them, all are diſcharged, becauſe his own Deed ſhall be taken moſt ſtrongly againſt himſelf, but otherwiſe it is in caſe of appeal of death, &c. as if two men be jointly and ſeverally bounden in an Obligation, if the Obligee releaſe to one of them, both are diſcharged, and ſeeing the Treſpaſſers are parties and privies in wrong, the one ſhall not plead a Releaſe to the other without ſhewing of it forth, albeit the Deed appertain to the other. 27.E.3.83.13.F.4.2. 15.E.4.26.21.E.4.72. 22.E.4.7.8.H.6.15. 20.H.6.41. 21.H.6. Arbitrement 41. 2.R.3.9.a.14.H.8.10. 34.H.8.tit.Eſtrange al fait 21.3.H.6.18.26.

If an action of debt upon an Obligation be brought againſt an heir, he may plead in bar a releaſe made by the Obligee, to the Executors. But albeit the Deed belong to another, yet muſt he ſhew it forth, for both of them are privy to the Teſtator. 13.E.2.tit.Monſtrans des faits. 42.

¶ *Per meſme le reaſon.* Ubi eadem ratio, ibi idem jus.

Sect. 377.

¶ Auxy ſi le feoffee donaſt ou grantaſt le fait Poll al feoffor, tiel grant ſerra bone, et donques le fait & le propertie del

ALſo if the feoffee granteth the deed to the feoffor, ſuch grant ſhall be good, and then the deed and the property thereof belongeth

¶ *Le propertie del fait appertient al feoffor.* Hereby it appeareth that a man may give or grant his deed to another, and ſuch a grant by Paroll is good.

And

And it is alſo implied, That if a man hath an Obligation, though he cannot grant the thing in action, yet he may give or grant the Deed, viz. the Parchment and Wax to another, who may cancel and uſe the ſame at his pleaſure.

¶ *Serra pluis toſt entend' que il vient al fait per loyal meane, que per tortious meane.* Omnia præſumuntur legitimè facta, donec probetur in contrarium. Injuria non præſumitur.

¶ Quære de dubiis. There be three kinds of unhappy men.

1. Qui ſcit & non docet, He that hath knowledge and teacheth not.
2. Qui docet & non vivit, He that teacheth, and liveth not thereafter.
3. Qui neſcit & non interrogat. He that knoweth not, and doth not enquire to underſtand. Therefore Littleton ſaith Quære de dubiis.

ſait appertient al Feoffor, &c. Et q̃n le Feoffor ad le fait en poigne, et eſt plead al court, il ſerra plus toſt entendue que il vient al Fait per loyal meane, que per tortious meane. Et iſſint a eux ſemble que le Feoffor poet bien pleder tiel fait polle que compiſent condition, &c. ſi ad le fait en poigne. Ideo ſemper quære de dubiis, quia per rationes pervenitur ad legitimam rationem, &c.

to the Feoffor, &c. and when the feoffor hath the deed in hand, and is pleaded to the Court, it ſhall be rather intended, that he cometh to the Deed by lawful means, than by a wrongful mean: and ſo it ſeemeth unto them, That the feoffor may well plead ſuch deed poll which compriſeth the condition, &c. if he hath the ſame in hand. *Ideo ſemper quære de dubiis, quia per rationes pervenitur ad legitimam rationem, &c.*

Infœlix cujus nulli ſapientia prodeſt.
Infœlix qui recta docet, cum vivit inique.
Infelix qui pauca ſapit ſpernitque doceri.

¶ Quia per rationes pervenitur ad legitimam rationem. For Ratio eſt Radius divini luminis. And by reaſoning and debating of grave learned men the darkneſs of ignorance is expelled, and by the light of legal Reaſon the Right is diſcerned, and thereupon Judgment given according to law, which is the perfection of Reaſon. This is of Littleton here called Legitima ratio, whereunto no man can attain but by long ſtudy, often conference, long experience, and continual obſervation.

Certain it is, that in matters of difficulty the more ſeriouſly they are debated and argued, the more truly they are reſolved, and thereby new inventions juſtly avoided.

Inter cuncta leges, & percunctabere Doctos.

Sect. 378.

¶ *Condition en Ley, &c.* Littleton having ſpoken of conditions in Deed, now according to his own diviſion commeth to ſpeak of Conditions in law.

¶ *Que ne ſoit ſpecifie en Eſcript.* A Condition in law is that which the law intendeth or implieth without expreſs words in the Deed.

¶ Eſtates que homes ont ſur condition en ley, ſont tiels eſtates que ont un condition per la ley a eux annex, coũt que ne ſoit ſpecifie en eſcript. Si come hõe grant per ſon fait a un auter Eſtates which men have upon condition in Law, are ſuch Eſtates which have a Condition by the law to them annexed, albeit that it be not ſpecified in writing. As if a man grant by his Deed to another the

Par-

Parkerſhip de un park a aũ & occupier meſme loffice pur terme de ſon vie, leſtate que il ad en loffice eſt ſur condition en ley, ceſtaſcavoir, que le parker bien & loyalment gardera le park, & ferra ceo q̃ a tiel office appertiẽt a faire, ou autrement bien lirroit al graunt̃or & a ſes heires de luy ouſte, & de grant̃ a un auter ſil voit, &c. Et tiel condition que eſt entendus per la ley eſtre annexe a alcun thoſe, eſt auxy fort come la condition fuiſſoit mis en eſcript.

the office of Parkerſhip of a Park, to have and occupy the ſame office for term of his life, the eſtate which he hath in the office is upon condition in Law, to wit, that the Parker ſhall well and lawfully keep the Park, and ſhall do that which to ſuch office belongeth to do, or otherwiſe it ſhall be lawful to the grantor, and his heirs to ouſt him, and to grant it to another if he will, &c. And ſuch condition as is intended by the law to be annexed to any thing, is as ſtrong as if the Condition were put in writing.

¶ *Que le Parker bien & loyalment gardera le Parke, &c.* Parke, this ſhould be written Parque which is a French word, & ſignifieth that which we vulgarly call a Park, of the French verb Parquer, to impark, to incloſe. It is called in Domeſday, Parcus. In law it ſignifieth a great quantity of ground incloſed, privileged for wild beaſts of chaſe by preſcription, or by the Kings grant.

The beaſts of Park, or chaſe properly extend to the Buck, the Doe, the Fox, the Marton, the Roe, but in a common and legal ſenſe, to all the beaſts of the Foreſt. There be both Beaſts and Fowls of the Warren. Beaſts, as Hares, Conies, and Roes called in Records (d) Capreoli. Fowls of two ſorts, viz. Terreſtres & Aquatiles, Terreſtres of two ſorts, Silveſtres and Campeſtres: Campeſtres as Partridge, Quail, Rail, &c. Silveſtres, as Pheſant, Wood-Cock, &c. Aquatiles, as Mallard, Hern, &c. whereof I have ſeen this Record. (a) Rex conceſſit Johanni de Beverly Armigero ſuo quod ipſe cum quibuſcunque canibus ſuis ad quaſcunque beſtias feras Regis in quibuſcunque foreſtis, parcis ſuis quotieſcunque voluerit venari poſſit, & quoſcunque Falcones poſſit permittere volare ad quaſcunque aves de Warrena in quibuſcunque ripariis, &c.

(d) Hill. 13. E. 3. coram Rege in Theſaur.

(a) 38. E. 3. rot. patent. pars 1. m. 10.

It is reſolved (b) by the Juſtices and the Kings Counſel, that Capreoli, id eſt, Roes, non ſunt Beſtiæ de foreſta, eo quod, fugant alias feras. Beaſts of Foreſts be properly Hart, Hind, Buck, Hare, Boar, and Wolf, but legally all wild beaſts of Venery.

(b) Hill. 12. E. 3. coram Rege in Theſaur.

A Foreſt and Chaſe are not, but a Park muſt be incloſed. The Foreſt and Chaſe do differ in Offices and Laws: every Foreſt is a Chaſe, but every Chaſe is not a Foreſt. A ſubject may have a Foreſt by eſpecial grant of the King, as the Duke of Lancaſter, and Abbot of Whitbie had.

Vide Sect. 1.

Ockam cap. quid Regis Foreſta, ſaith, Foreſta eſt tuta ferarum manſio non quarumlibet, ſed ſilveſtrium, non quibuſlibet in locis, ſed certis, & ad hoc idoneis, unde Foreſta E mutata in O. Quaſi feteſta, hoc eſt: Ferarum ſtatio.

Vid. Brack. fo. 231. & 216. Britton fo. 34. Fleta l. 2. cap. 34. 35.

Pudzeld or Woodgeld is to be free from payment of money for taking of Wood in any Foreſt. But let us now return to our Littleton.

In this Section Littleton putteth an example of a condition in law annexed to the office of the Keeper of a Park, but this example muſt be underſtood with a diſtinction, for if the Parker doth not attend on the Park one or two, &c. days, this is no forfeiture of the Office of Parkerſhip, but if in his default any Deer be killed, & ſo a damage to the Lord, that is a forfeiture: for (that it may be ſaid once for all) non-uſer of it ſelf without ſome ſpecial damage is no forfeiture of private offices, but non-uſer of publique offices which concern the adminiſtration of juſtice, or the common wealth, is of it ſelf a cauſe of forfeiture.

5. E. 4. 15 b. L. 5. E. 4. 26. Pl. com. 379, 380. 2. H. 7. 11. 30. H. 6. 32. &c

¶ *Luy ouſter ſil voit, &c.* Littleton here ſpeaketh of an Ouſter by force of a Condition in Law, therefore it is to be ſeen in what other caſes the Grantor may lawfully ouſt his Officer.

There is a diverſity between officers that have no other profit, but a collateral certain fee, for there the Grantor may diſcharge him of his ſervice, as to be a Baily, receiver, ſurveyor,

18.E.4.8.31.H.8.grants. Fr.134. 24.H.8.ibid.93. 11.Eliz.Dier.285.

beyor, Auditor, or the like, the exerciſe whereof is but labour and charge to him, but he muſt have his fee: for the main rule of Law is, that no man can fruſtrate or derogate from his own grant to the prejudice of the Grantee. And where albeit the Grantee hath no other profit but his fee, yet that fee is to be perceived and taken out of the profits appertaining to the Lord within his office, for there the grantor cannot diſcharge him of his ſervice or attendance, for that may turn to the prejudice of the Grantee, if the Grantor will not grant the Office at all. But in all caſes where the Officer relinquiſheth his Office, and refuſeth to attend, he loſeth his Office, Fee, Profit and all.

There is another diverſity where the Grantee, beſides his certain fee, hath profits and avails by reaſon of his office, there the Grantor cannot diſcharge him of his ſervice or attendance, for that ſhould be to the prejudice of the grantee. As if a man doth grant to another the office of the Stewardſhip of his Courts of his Mannors with a certain fee, the Grantor cannot diſcharge him of his ſervice and attendance, becauſe he hath other profits and fees belonging to his office, which he ſhould loſe, if he were diſcharged of his office. And as in the caſe which Littleton here putteth of the office of the Keeper of a Park, for that he hath not only his fee certain, but profits and avails alſo, in reſpect of his office, as Deer Skins, Shoulders, &c. But now let us proceed and ſee what other particular forfeitures in Law be of this office here ſpoken of by Littleton, and ſomewhat of Conditions in Law in general.

22.H.6.10.3.6.E.6. Dier. 71.

15.E.4.3.1.5.E.4.26. 28.H.8. Bendloes enter Eveſque de Londres & Hieron.lib 9 fo.50.95. 99.

And it is to be underſtood, that if any Keeper kill any Deer without warrant, or fell or cut any Trees, Woods, or Underwoods, and convert them to his own uſe, it is a forfeiture of his office, for the deſtruction of vert is, by a mean, deſtruction of Venison, So it is if he pull down the lodge or any houſe within the Park for putting of Hay into it for ſeeding of the Deer or ſuch like, it is a forfeiture, and the reaſon wherefore the office in theſe and in like caſes ſhall be forfeited (f) is quia in quo quis delinquit in eo de jure eſt puniendus.

(f) Mich.31.E.1.coram Rege in Theſaur.Leveſque de Durhams caſe.

As to conditions in Law, you ſhall underſtand they be of two Natures, that is to ſay, by the common Law, and by Statute. And thoſe by the common Law are of two Natures, that is to ſay, the one is founded upon ſkill and confidence, the other without ſkill or confidence: Upon ſkill and confidence, as here the office of Parkerſhip, and other offices in the next Section mentioned, and the like.

Pl.com.373.a.Sir Henry Nevils caſe.21.E.4.20. 93. Lib.8.fol.44. Wittinghams caſe.

Touching conditions in law without ſkill, &c. ſome be by the common law, and ſome by the ſtatute. By the common law as to every eſtate of Tenant by the courteſie, tenant in tail after poſſibility of iſſue extinct, tenant in dower, tenant for life, tenant for years, tenant by ſtatute merchant, or Staple, tenant by Elegit, Gardian, &c. there is a condition in law ſecretly annexed to their eſtates, that if they alien in fee, &c. that he in the reverſion or remainder may enter, and ſic de ſimilibus, or if they claim a greater eſtate in Court of Record, and the like.

Concerning conditions in law founded upon ſtatutes, for ſome of them an entry is given, and for ſome other a recovery by action: where an entry is given, as upon an alienation in Mortmain, &c. and the like. Where an action is given, as for waſte againſt Tenant for life and years, and the like.

¶ *Et tiel condition que eſt entendus per la ley eſtre annex a aſcun choſe eſt auxi fort, &c.* Here it is worthy the obſervation to take a view of the diviſion aforeſaid in ſome particular caſe. As for example. Admit that an Office of Parkerſhip be granted or deſcend to an Infant or Feme Covert, if the conditions in law annexed to this office which require ſkill and confidence be not obſerved and fulfilled, the office is loſt forever, becauſe as Littleton ſaith here, it is as ſtrong as an expreſs condition. But if a leaſe for life be made to a Feme covert, or an Infant, and they by charter of feoffment alien in fee, the breach of this condition in law, that is without ſkill, &c. is no abſolute forfeiture of their eſtate. So of a condition in law given by Statute, which giveth an entry only. As if an Infant or Feme covert with her husband aliens by Charter of Feoffment in Mortmain, this is no bar to the Infant, or Feme covert. But if a recovery be had againſt an Infant or Feme covert in an action of Waſte, there they are bound and barred forever.

Lib. 8. fol. 44. Wittinghams caſe.

And it is to be obſerved, that a condition in law by force of a ſtatute which giveth a recovery is in ſome caſe more ſtrong than a condition in law without a recovery. For if Leſſee for life make a leaſe for years, and after enter into the land, and make waſte, and the Leſſor recover in an action of waſte, he ſhall avoid the leaſe made before the waſte done. But if the Leſſee for life make a leaſe for years, and after enter upon him, and make a feoffment in fee, this forfeiture ſhall not avoid the leaſe for years. Nor in any of the ſaid caſes a preſent Rent granted out of the land ſhall be avoided. For if Leſſee for life grant a rent charge, and after doth waſte, and the Leſſor recovereth in an action of waſte, he ſhall hold the land charged

ged during the life of the Tenant for life, but if the rent were granted after the waſte done, the Leſſor ſhall avoid it.

And the reaſon wherefore the leaſe for years in the caſe aforeſaid, ſhall be avoided, is becauſe of neceſſity the Action of waſte muſt be brought againſt the Leſſee for life, which in that caſe muſt bind the Leſſee for years, or elſe by the act of the leſſee for life the leſſor ſhould be barred to recover Locum vaſtatum, which the Statute giveth.

If a man hath an Office for life which requireth skill and confidence, to which Office he hath a houſe belonging, and chargeth the houſe with a rent during his life, and after commit a forfeiture of his office, the rent charge ſhall not be avoided during his life, for regularly a man that taketh advantage of a condition in law ſhall take the land with ſuch charge as he finds it. And therefore Littleton is here to be underſtood, that a Condition in law is as ſtrong as a condition in deed, as to avoid the eſtate or intereſt it ſelf, but not to avoid precedent charges, but in ſome particular caſes, as by that which hath been ſaid appeareth.

There be at this day more conditions in law annexed to offices then were when Littleton wrote: for example, for offices in any wiſe touching the adminiſtration or execution of Juſtice, or Clerkſhip in any Court of Record, or concerning the Kings Treaſure, Revenue, Account, Cuſtoms, Vinage, Auditorſhip, Kings Surveyor, or keeping of any of his Majeſties Caſtles, Forts, &c. For if any of theſe Officers bargain or ſell any of the ſaid Offices or any deputation of the ſame, or take any money or profit, or any promiſe, covenant, bond or aſſurance, to have any money or reward for the ſame, the perſon ſo bargaining or ſelling, or that ſhall take any ſuch promiſe, covenant, bond or aſſurance, ſhall not only forfeit his eſtate, but alſo every perſon ſo buying, giving or aſſuring be adjudged a diſabled perſon to have or enjoy the ſame office or offices, deputation, or deputations, &c. And that all ſuch bargains, ſales, promiſes, covenants and aſſurances, as be before ſpecified, ſhall be void, except as in the ſaid Act is excepted. 3. H. 7. ca. 12. Auditor, Receiver, Bailif, Keeper of a Caſtle, Maſter of the game, Keeper or Parke, of any Forreſt, Parke, Chace, &c. 7 E. 6 ca. 1. Treaſurer, Receiver, Collector, Bailif, &c. 5 E. 6. cap. 16.

Sir Robert Vernon Knight, being Cofferer of the Kings houſe of the Kings gift, and having the receit of a great ſum of money yearly of the Kings Revenue, did for a certain ſum of money bargain and ſell the ſame to Sir A. I. and agreed to ſurrender the ſaid office to the King, to the intent a grant might be made to Sir A. who ſurrendred it accordingly: and thereupon Sir A. was by the Kings appointment admitted and ſworn Cofferer. And it was reſolved by Sir Thomas Egerton Lord Chancellour, the chief Juſtice, and others to whom the King referred the ſame, that the ſaid office was void by the ſaid Statute, and that Sir A. was diſabled to have or to take the ſaid office, and that no non obſtance could diſpence with this act to enable the ſaid Sir A. for the reaſon and cauſe before mentioned, Sect. 180. And hereupon Sir A. was removed, and Sir Marmaduke Darrell ſworn (by the Kings commandment) in his place. And note that all promiſes, bonds and aſſurances aſwell on the part of the bargainor, as of the bargainee, are void by the ſame Act. Mich. 13 Jacobi Regis. Lib. 3. f. 83. Colſhils caſe.

(a) Nulla alia re magis Romana reſpublica interiit, quam quod magiſtratus officia venalia erant. (a) Ærod. fo. 35.

(g) Jugurtha going from Rome, ſaid to the City, Vade venalis civitas, mox peritura ſi emptorem invenias. (g) Saluſt.

Therefore by the Law of England it is further provided, that no Officer or Miniſter of the King ſhall be ordained or made for any gift or bruage, favour or affection, nor that any which purſueth by him or any other, privily or openly to be in any manner of office, ſhall be put in the ſame office or in any other, but that all ſuch officers ſhall be made of the beſt and moſt lawful men and ſufficient. A law worthy to be written in letters of Gold, but more worthy to be put in due execution. For certainly never ſhall Juſtice be duly adminiſtred, but when the officers and miniſters of Juſtice be of ſuch quality, and come to their places in ſuch manner as by this law is required. 12. R. 2. cap. 2.

¶ *Tiel condition que eſt entendus per la ley eſtre annex a aſcun choſe, eſt auxi fort ſicome la condition ſuit miſe in eſcript.* And this accords with that ancient rule: Utiquè fortior & potentior eſt diſpoſitio legis quam hominis. Vid. Sect. 419. 429, 430.

Sect. 379.

¶ Item l' maner eſt de grants offices de ſeneſchal, Conſtabular, Bedelary, bailiwick, ou auts

IN this manner it is of grants of the offices of Steward, Conſtable, Bedelary, Bayliwick, or other offices, &c. But if

¶ *Seneſchall.* Of this I have ſpoken before. Of 21. E. 4. 20. Pl. Com. 379.

¶ *Conſtabularie.* Of this likewiſe ſomething hath been ſpoken before. 8. E. 4. 6.

before. But a Conſtable is often taken in the law for a Warden or keeper, as Conſtabularius caſtri de Dover & portuum; for the Warden of the Caſtle of Dover and the Cinque-ports, &c. So as in this ſenſe Conſtabularius is taken for Caſtellanus, and this is proved by the Statute (a) of W. 1. cap. 7. Des priſes des Conſtables ou Caſtellains faitz des auters, &c. And Magna Carta c. 19. Nullus conſtabularius vel ejus ballivus capiat blada vel alia catalla alicujus qui non ſit de villa, ubi caſtrum ſuum ſitum eſt, &c.

(a) W. 1. cap. 7.

(b) Magna carta. c. 19.

offices, &c. Mes ſi tiel office ſoit grant a un hom̃, a aver & occupier per luy ou ſon deputie, donqz ſi loffice ſoit occupy p luy, ou per ſon deputie, ſicom̃ il devoit per le ley eſtre occupie, ceo ſuffiſt pur luy, ou autrement le grantor & ſes heirs poient ouſter le grantee, come eſt avantdit.

ſuch office be granted to a man, To have and to occupy by himſelf or his deputy, then if the office be occupied by him or his deputy, as it ought by the law to be occupied, this ſufficeth for him, or otherwiſe the grantor, and his heirs may ouſt the Grantee as is aforeſaid.

Stanford fo. 152. Conſtabularius Turris London, for Cuſtos Turris, 32. H. 8. cap. 28. Conſtable of the Foreſt, for the Keeper of the Foreſt.

Stanf. fol. 152. 32. H. 8. c. 28.

¶ *Bedelarie.* Bedell is derived of the French word Beaudeau, which ſignifieth a meſſenger of the Court, or under Baylif, in Latine Bedellus.

And the oath of a Bedell of a Mannor is, that he ſhall duly and truly execute all ſuch attachments and other proceſs as ſhall be directed to him from the Lord or Steward of his Court, and that he ſhall preſent all pound Breaches, which ſhall happen within his office, and all chattels waived, and eſtrays.

¶ *Bayliwicke.* Of this ſufficient hath been ſaid before.

Sect. 380.

¶ Here Littleton termeth words of limitation to be conditions in law: for, his firſt example is.

¶ *Durant le coverture enter eux.* Durante cooperturâ inter eos. This word (Durante) is properly a word of limitation, as Durante viduitate, or Durante virginitate, or Durante vita, &c. And properly a condition in law is, as hath been ſaid, where the law createth the ſame without any expreſs words.

Dum, alſo maketh a limitation, as if a leaſe be made, Dum ſola fuerit, or Dum ſola & caſta vixerit. Dummodo is alſo a word of limitation, as Dum-

37. H. 6. 27. 3. E. 3. 15. 3. Aſſ. Pl.

¶ Item eſtates de fres ou tenemẽts purront eſtre ſur condition en ley, coment que ſur leſtate fait ne ſuit alcun mention ou reherſal fait de le condition. Sicome mittomus q̃ un leas ſoit fait a le baron, & a ſa feme, a aver & tener a eux durãt l' coverture enter eux, en ceſt cas ils ont eſtate pur term̃ de lour deux dies ſur condition en ley, ſ. ſi un de eux devie, ou que deworce ſoit fait enter eux, donqz bien

ALſo eſtates of lands or tenements may be made upon condition in law, albeit upon the eſtate made there was not any mention or rehearſal made of this condition. As put the caſe that a leaſe be made to the husband and wife, to have and to hold to them during the coverture between them, In this caſe they have an eſtate for term of their two lives upon condition in law, s. if one of them die, or that there be a divorce between

lirroit

lirroit a le leſſor et a ſes heires dentrer, &c.

them, then it ſhall be lawful for the leſſor & his heirs to enter, &c.

modo ſolverit talem redditum. Quamdiu alſo is a word of limitation, for if a man grant a rent out of the Mannor of D. this is good, or Quamdiu ſe bene geſſerit. 14.E.2.Grant 92. 37.H.6.27.

Quamdiu the Grantor ſhall be dwelling upon the Mannor,

And ſo be theſe words, Donec, Quouſque, uſque ad, Tam diu, Ubicunque.

¶ *Si lun de eux devie &c.* For if one of them die the coverture is diſſolved, and conſequently the ſtate determined by the limitation. 10.Aſſ.4.6.E.3.8 9 31. 3.E 3.18.Annuity.40. 19.H.6.54.Temps E.1. Annuity 150 11.Aſſ.p.8 21.Aſſ.p.18. 26 E.3.69. 7.E.4.16.9.E.4.25,26. 9.H.6.39.14.H.8.13.

¶ *Ou que Divorce ſoit fait enter eux, &c.* Here is a diſtinction to be underſtood: for there be two kind of divorces, viz. one a Vinculo matrimonii, (a) and the other A menſa & thoro. Divortium dicitur à divertendo, or Divortendo, quia vir divertitur ab uxore. Divorces A vinculo matrimonii are theſe: Cauſa Præcontractus, Cauſa metus, Cauſa Impotentiæ ſeu Frigiditatis, Cauſa Affinitatis, Cauſa Conſanguinitatis, &c. And I read in an ancient Record, Coram Rege Termino Paſch. 30.E.1. William de Chadworthes caſe, that he was divorced from his wife for that he did carnally know her Daughter before he married the Mother; all which are cauſes of divorce preceding the marriage. a) 47.E 3.27.39.E.3.32. 33. 11.H 4.14.76. Bracton f.l.298. 18 E 4 28.24.H.8. baſtards.

A menſa & Thoro, as Cauſa Adulterii which diſſolveth not the marriage A Vinculo Matrimonii, for it is ſubſequent to the marriage. And the Divorce that Littleton here ſpeaketh of is intended of ſuch divorces, as diſſolve the marriage A Vinculo Matrimonii, and maketh the iſſue baſtard, becauſe they were not Juſtæ nuptiæ. And therefore in Littletons caſe though the husband and wife be divorced Cauſa Adulterii, yet the freehold continueth, becauſe the Coverture continueth. And it is further to be underſtood that many divorces that were of force by the Canon Law, when Littleton wrote, are not at this day in force, for by the Statute of 32. H. 8. cap. 38. it is declared that all perſons be lawful (that is, may lawfully marry) that be not prohibited by Gods law to marry, that is to ſay, that be not prohibited by the Levitical degrees. Br.44.39.E.1.baſtard 21 22.E.4.tit.Conſultat.5. 6.E.3.249.25.E.3.39. Vide Sect. 399. 32.H.8.cap.38.

A man married the daughter of the ſiſter of his firſt wife, and was drawn in queſtion in the Eccleſiaſtical Court for this marriage, alledging the ſame to be againſt the Canons. and it was reſolved (n) by the Court of Common-Pleas upon conſideration had of the ſaid ſtatute, that the marriage could not be impeached, for that the ſame was declared by the ſaid Act of Parliament to be good, inaſmuch as it was not prohibited by the Levitical degrees, Et ſic de ſimilibus. (n) Tr.2.Jac.Rot. 1032. Richard Parſons caſe.

Sect. 381.

¶ ET que ils ont eſtate pur terme de leur deux vies, Probatur ſic, cheſcun home que ad eſtate de franktenement en aſcun terres ou tenements, ou il ad eſtate en fee, ou en fee taile, ou pur terme de ſa vie demeſne, ou pur terme dauter vie, et per tiel leaſe ils ont franktenement, mes ils nont per teſt grant fee, ne fee taile ne pur terme dauter vie, Ergo, ils ont eſtate pur terme de lour vies, mes ceo eſt ſur condition en ley, en le forme avantdit, et en ceſt cas ils ſeront waſt, le feoffor avera enders eux briefe de waſt

AND that they have an eſtate for term of their two lives, is proved thus, every man that hath an eſtate of freehold in any lands or tenements, either he hath an eſtate in fee, or in fee tail, or for term of his own life, or for term of another mans life, and by ſuch a leaſe they have a freehold, but they have not by this grant fee, nor fee tail, nor for term of anothers life, *Ergo*, they have an eſtate for term of their own lives, but this is upon condition in law in form aforeſaid, and in this caſe if they ſhall do waſt, the feoffor ſhall

ſue-

ſuppoſant per ſon brieſe, Quod tenet ad terminum vitæ, &c. mes en ſon count il declare coment & en quel maner le leas fuit fait.

have a writ of waſte againſt them ſuppoſing by his writ, *Quod tenet ad terminum vitæ, &c.* but in this count he ſhall declare how, and in what manner the leaſe was made.

Fleta, 561. b. Vi. Sect. 345. ſimile.

¶ *Probatur ſic.* By this argument logically drawn à diviſione, it appeareth, how neceſſary it is that our Student ſhould (as Littleton did) come from ons of the Univerſities, to the ſtudy of the Common law, where he may learn the liberal Arts and eſpecially Logick, for that teacheth a man not only by juſt argument to conclude the matter in queſtion, but to diſcern between truth and falſhood, and to uſe a good method in his ſtudy, and probably to ſpeak to any legal queſtion, and is defined thus, Dialectica eſt ſcientia probabiliter de quovis themate differendi, whereby it appeareth how neceſſary it is for our Student.

37. H 6. 27.

¶ *Suppoſant per ſon brieſe* Quod tenet ad terminum vitæ, *&c.* This and the reſt of this Section is evident and plain.

Sect. 382.

Vid. Bract. lib. 5. 414.

¶ *SI un Abbe.* So it is of a Biſhop, Arch-Deacon, and other Eccleſiaſtical or temporal Body Politick or Corporate, or of any Officer or Graduate, or the like.

¶ *Reſigne ou ſoit depoſe.* And ſo it is of a Tranſlation and Ceſſion.

¶ EN meſme l' maner eſt, ſi un Abbe fait un Leaſe a un home, a aver et tener a luy durant le temps que l' leſſor eſt Abbe, en ceſt caſe le Leſſee ad eſtate pur terme de ſa vie demeſn̄, mes ceo eſt ſur condition en ley, ſ̄, que ſi labbe reſigna, ou ſoit d̄poſe, que bien lirroit a ſ̄ ſucceſſor, dentrer, &c.

IN the ſame manner it is if an Abbot make a leaſe to a man for years, to have & to hold to him during the time that the Leſſor is Abbot; in this caſe the Leſſee hath an Eſtate for term of his own life: but this is upon condition in Law, ſ. That if the Abbot reſign or be depoſed, that then it ſhall be lawful for his ſucceſſor to enter, &c.

Sect. 383.

¶ LIVRE *Daſſiſes* is a Book of the Repoꝛts of Caſes in the raign of King Edward the third, and it is called the Book of Aſſiſes, becauſe the greateſt part of the caſes therein are upon Writs of Aſſiſes bꝛought as hath been ſaid, and which hath been cited beforꝛe.

¶ *Deviſa les Tenements a vendre per ſon Executor.* This muſt

¶ ITem home poit veier en le Liuꝛ Daſſiſe, viz. anno 38. E. 3. p. 3. un pl' Daſſ. en ceſt forme que enſuiſt: ſ̄, Un Aſſiſe de Novel Diſſeiſin auterloits fuit poꝛt vers A. que pleda al Aſſiſe, et trove fuit per verdit, Que

ALſo a man may ſee in the Book of Aſſiſes, *Anno* 38. *E.* 3. *p.* 3. a plea of Aſſiſe in this form following, ſ. An Aſſiſe of *Novel Diſſeiſin* was ſometime bꝛought againſt A. who pleaded to the Aſſiſe, & it was found by verdict, that laun

launceſtor le plaintif devisa les Tenemẽts a vendre per le Defendant, que fuit ſon Executor, et de faire diſtribution des deniers pur ſon alm: Et fuit trove que maintenant apres la mort le Teſtator, un home luy tendit certaine ſumme de deniers pur les Tenements, mes non pas al value, & que le Executor puis avoit tenus les Tenements en ſa main demeſne per deux ans, al entent de les vender pluis chier a aſcun auter, et trove fuit q̃ il avoit tout temps mis les profits de les Tenements a ſ̃ uſe demeſne ſans riẽ faire pur lalme le mort, &c. Moubray Juſtice diſoit, Lexecutor en tiel caſe eſt tenus p̃ la ley a faire le vender a pluis toſt que il purroit apres la mort ſon Teſtator, et trove eſt que il refuſe de faire vendr̃, & iſſint de avoit un default en luy, et iſſint per force del devise il fuiſt tenus dañ mis touts le profits avenants de les Tenements al uſe l' mort, et trove eſt que il avoit

the Anceſtour of the Plaintif deviſed his lands to be ſold by the Defendant who was his Executor, and to make diſtribution of the money for his Soul. And it was found, That preſently after the death of the Teſtator, one tendred to him a certain ſum of mony for the lands, but not to the value, and that the Executor afterwards held the lands in his own hands two years, to the intent to ſell the ſame dearer to ſome other, and it was found that he had all the time taken the profits of the lands to his own uſe, without doing any thing for the ſoul of the deceaſed, &c. *Moubray* Juſtice ſaid, The Executor in this caſe is bound by the Law to make the ſale as ſoon as he may after the death of his Teſtator, and it is found that he refuſed to make ſale, and ſo there was a default in him, and ſo by force of the Deviſe he was bound to put all the profits coming of the lands to the uſe of the dead, and it is found that he took them to his

be intended to be of Lands devi:able by Cuſtom, for Lands by the Common law were not deviſable, (as hath been ſaid:) for in this Section is implied a diverſity, viz. when a man deviſeth that his Executor ſhall ſell the land, there the lands deſcend in the mean time to the heir, and until the ſale be made, the heir may enter and take the profits. But when the Land is deviſed to his Executor to be ſold, there the deviſe taketh away the deſcent, & veſteth the ſtate of the land in the Executor, and he may enter and take the profits, and make ſale according to the deviſe. And here it appeareth by our Author, That when a man deviſeth his tenements to be ſold by his Executors, it is all one as if he had deviſed his tenements to his executors to be ſold: and the reaſon is, becauſe he deviſeth the tenements, whereby he breaks the Deſcent.

¶ Mowbray. John Mowbray was a reverend Judge of the Court of Common pleas, and deſcended of a Noble Family.

¶ *Lexecutor en tiel caſe eſt tenus per la Ley a faire le vender a pluis toſt que il purroit apres la mort ſon Teſtator, &c.* And the reaſon hereof is, for that the mean profits taken before the ſale, ſhall not be Aſſets, ſo as he may be compellable to pay debts with the ſame, & therefore the law will inforce him to ſell the lands as ſoon as he can, for otherwiſe he ſhall take advantage of his own laches: But if a man deviſe that his Executor ſhall ſell his land, there he may ſell it at any time, for that he hath but a bare power, and no profit. And by this caſe it appeareth what conſtruction the Law maketh for the ſpeedy payment of debts. And here is to be obſerved, That many

words

words in a Will do make a condition in law, that make no condition in a deed: as here to devise lands to an Executor ad vendendum, so if lands be devised to one ad solvendum 20 l. to I. S. or paying twenty pounds to I. N. this amounts to a condition. And Crickmers case was this, A man seised of certain lands holden in Socage had issue two daughters A. and B. and devised all his lands to A and her heirs, to pay unto B. a certain sum of money at a certain day & place, the money was not paid, and it was adjudged, That these words, To pay, &c. did amount in a Will to a condition, and the reason was, for that the land was devised to A. for that purpose, otherwise B. to whom the money was appointed to be paid, should be remediless, Et interest reipublicæ suprema hominum testamenta rata haberi: and the lessee of B. upon an actual Ejectment recovered the moity of the land against A.

Mich. 31. & 32. El. in the Kings Bench, Crickmers case adjudge. Dy. 6. E. 6. fo. 74. 7. E. 6. 70.

priſe a ſ̃ uſe ꝺmeſne, et iſſint auter default en luy: Per que ſuit adjudge que le plaintife recovera. Et iſſint appiert per le dit judgment, que per force del dit deviſe, lexecutor navoit Eſtate ne poyer en les Tenements, forſque ſur condition en ley.

own uſe, and ſo another default in him. Wherefore it was adjudged, That the Pl'. ſhould recover. And ſo it appeareth by the ſaid Judgment, That by force of the ſaid Deviſe the Executor had no eſtate nor power in the lands, but upon condition in law.

¶ *Et iſſint appiert per le judgement, &c.* This concluſion upon a Judgment is of great authority in law, Quia judicium pro veritate accipitur, and as it hath been ſaid, Judicium is quaſi juris dictum.

Sect. 384.

9. E. 4. 36.

HEreby it appeareth that limitations which (as hath been ſaid, Littleton termeth conditions in law) may be pleaded without Deed, and the reaſon of our Author is obſervable, becauſe the law in it ſelf purporteth the Condition, whereof ſomewhat hath bin ſaid before, and therefore look back to the conditions in law, or words of limitation, and withall that a ſtranger may take advantage of a limitation, as hath been ſaid.

Vide Sect. 220.

Littleton having ſpoken at large of conditions in Deed and in law, ſomewhat ſeemeth neceſſary to be ſaid of defeaſances whereby the ſtate or right of Freehold or inheritance may be defeated and avoided.

¶ *Deſeaſance*, Deſeiſantia is fetched from the French word Defaire, i. to defeat or undo, infectum reddere quod factum eſt. There is a diverſity between Inheritances executed, and Inheritances executory, as lands executed by livery, &c. cannot by Indenture of Defeaſance be defeated afterwards. And ſo if a Diſſeiſee releaſe a Diſſeiſor, it cannot be defeated by Indentures of Defeaſance made afterwards, but at the time of the releaſe or feoffment, &c. the ſame may be defeated by Indentures of Defeaſance, for it is a Maxim in Law, Quæ incontinenti fiunt in eſſe videntur.

Bract. l. 2. fo. 16. 17. Aſſ. p. 2. 5. E. 3. 42. E. 3. 1. 43. E. 3. 17. 43. Aſſ. 12. 7. H. 6. 43. 8. H. 6. 23. 32. E. 3. Annu. 30. 5. E. 3. Annuity. 44. 30. Aſſ. p. 1. 30. Aſſ. p. 11. 31. Aſſ. 32.

¶ Et mults auters choſes et cases p ſont deſtates ſur condition ē la ley, et en tiels cases il ne beſoigne daver monſtre aſcun fait rehearſant la condition pur ceo que la ley en luy meſme purpoꝛt l' condition, &c.

Ex paucis dictis intendere plurima poſſis.

¶ Plus ſerra dit de Conditions en le prochein Chapter, en le chapter de Releaſes, et en le Chapter de Diſcontinuance.

AND many other things there are of Eſtates upon Condition in Law, and in ſuch caſes he needed not to have ſhewed any Deed, rehearſing the condition, for that the Law it ſelf purporteth the Condition, &c.

Ex paucis dictis intendere plurima poſſis.

More ſhall be ſaid of Conditions in the next Chapter, in the Chapter of Releaſes, and in the Chapter of Diſcontinuance.

But

But Rents, Annuities, Conditions, Warranties, and ſuch like, that be Inheritances Executory, may be defeated by defeaſances made, either at that time, or at any time after: And ſo the Law is of Statutes, Recognizances, Obligations, and other things Executory. 20. Aſſ. pl. 7. 7. E. 4. 29. Browning and Beſtons caſe. Pl. Com. 121. 28 H. 8. Dier 6. 27 H. 8. 15. 19. R. 2. done. 10. Albanies caſe, li. 1. 107.

¶ *Ex paucis dictis intendere plurima poſſis.*

Verſes at the firſt were invented for the help of memory, and it ſtandeth well with the gravity of our Lawyer to cite them. By this Verſe of our Author, Inferences and Concluſions in like caſes are warrantable.

Laſtly, ſomewhat were neceſſary to be ſpoken concerning clauſes of proviſoes, containing power of revocation, which ſince Littleton wrote, are crept into voluntary Conveyances, which paſs by raiſing of uſes, being executed by the (a) Statute of 27. H. 8. and are become very frequent, and the Inheritance of many depend thereupon. As if a man ſeiſed of lands in fee, and having iſſue divers Sons, by Deed indented, covenanteth in conſideration of fatherly love, and for the advancement of his blood, or upon any other good conſideration, to ſtand ſeiſed of three Acres of land to the uſe of himſelf for life, and after to the uſe of Thomas his eldeſt Son in tail; and for default of ſuch iſſue, to the uſe of his ſecond Son in tail, with divers like remainders over. With a Proviſo that it ſhall be lawful for the Covenantor at any time during his life to revoke any of the ſaid uſes, &c. This Proviſo being coupled with an uſe, is allowed to be good, and not repugnant to the former States. But in caſe of a Feoffment, or other Conveyance, whereby the Feoffee or Grantee, &c. is in by the Common Law, ſuch a proviſo were meerly repugnant and void. (a) 27. H. 8. cap. 10.

And firſt in the caſe aforeſaid, if the Covenantor, who had an eſtate for life, do revoke the uſes according to his power, he is ſeiſed again in fee ſimple without entry or claim.

Secondly, he may revoke part at one time, and part at another.

Thirdly, if he make a feoffment in fee, or levy a fine, &c. of any part, this doth extinguiſh his power but for that part, whereas in that caſe the whole condition is extinct. But if it be made of the whole, all the power is extinguiſhed. So as to ſome purpoſes, it is of the nature of a condition, and to other purpoſes in nature of a limitation. Lib. 1. fol. 173, 174. Digges caſe. Lib. 1. fol. 107. Albanies caſe. Lib. 10 fo. 143. Scropes caſe. Lib. 7. fo. 12, 13. Sir Francis Engleſields caſe.

Fourthly, if he that hath ſuch power of revocation hath no preſent intereſt in the Land, nor by the Ceaſor of the ſtate ſhall have nothing, then his feoffment or fine, &c. of the land is no extinguiſhment of his power, becauſe it is meer collateral to the Land.

Fifthly, by the ſame Conveyance that the old uſes be revoked, may new be created or limited, where the former ceaſe ipſo facto by the revocation, without either entry or claim.

Sixthly, that theſe revocations are favourably interpreted, becauſe many mens Inheritances depend on the ſame. And here I may apply the abovеſaid verſe:

Ex paucis dictis intendere plurima poſſis.

CHAP. 6. Diſcents que tollent Entries. *Sect.* 385.

'Diſcents, que tollent Entries ſont en deux maners, ceſtaſcavoir, ou diſcent eſt en fee, ou en fee taile: Diſcents en Fee que tollent entries ſont, ſicome home ſeiſie de certaine terres ou tenements eſt

Diſcents which toll Entries are in two manners, to wit, where the Diſcent is in fee, or in fee tail. Diſcents in fee which toll entries are, as if a man ſeiſed of certain lands or tenements is by another diſſeiſed, and the diſſeiſor hath iſſue, and

¶ *Diſcents.* This word cometh of the Latine word diſcendere, id eſt, ex loco ſuperiore in inferiorem movere; and in legal underſtanding it is taken when land, &c. after the death of the Anceſtors is caſt by courſe of law upon the heir, which the law calleth a Diſcent. And this is the nobleſt and worthieſt means whereby lands are derived from one to another, becauſe it is wrought and veſted by Mirror, cap. 2. ſect. 5. Bracton, lib. 5. fol. 370, and 434. Britton, fol. 115, 215. Vide Sect. 5.

the Act of Law, and Right of Bloud, unto the worthieſt & next of the Bloud and Kindred of the anceſtor, and therefore it hath not in the common law altogether the ſame ſignification, that it hath in the civil law, for the Civilians call him, Hæredem, qui ex teſtamento ſuccedit in univerſum jus teſtatoris. But by the common law he is only Heir which ſucceedeth by Right of Bloud. And this agreeth well with the Etymology of the word (Heir) to whom the Lands diſcend, for Hæres dicitur ab hærendo, quia qui hæres eſt hæret, hoc eſt, proximus eſt ſanguine illi cujus eſt Hæres. So as he that is Hæres, ſanguinis eſt hæres, & herus hæreditatis.

¶ *Diſcents que tollent entries ſont en deux Manners.* Here is an exact and perfect diviſion made by our Author, and yet withall plain and perſpicuous.

p un auter diſſeiſie, & le diſſeiſor ad iſſue & mozust de tiel eſtate ſeiſie, oze les tenements diſcendont al iſſue del diſſeiſor per courſe de la ley come heire a luy: Et pur ceo que la ley mitte les terres ou tenements ſur liſſue per force del diſcent, iſſint que liſſue vient a les teneiments per courſe de ley, & nemy per ſon fait demeſne, lentrie le diſſeiſee eſt tolle, & il eſt mis de ſuer un bzieſe Dentre ſur diſſeiſin **enbers le heire le Diſſeiſor, de recoberer la terre.**

dieth of ſuch eſtate ſeiſed, now the Lands diſcend to the iſſue of the Diſſeiſor by courſe of Law, as heir unto him. And becauſe the Law caſt the lands or tenements upon the iſſue by force of the diſcent, ſo as the iſſue cometh to the lands by courſe of Law, and not by his own Act, the entry of the Diſſeiſee is taken away, and he is put to ſue a Writ of *Entrie ſur diſſeiſin* againſt the heir of the Diſſeiſor, to recover the land.

Now, as a diſcent is the worthieſt means to come to Lands, &c. ſo hath the Heir more priviledges, than any that by other order or means come to the lands, &c. as ſhall appear hereafter.

(a) Bracton, lib. 4. fol. 162, & 209. Britton, fol. 115. Fleta, lib. 4. cap. 2. (b) 50. E 3. 21. 1. Aſſ. 13. 20 H 3. Aſſ. 432. 9. Aſſ. 15. 29. Aſſ. 5. 54. 26. Aſſ. 12. 21. Aſſ. 28. 43. Aſſiſe 17. (c) Lamb. explicat. fol. 120. 70.

Nota, In ancient time (a) if the Diſſeiſor had been in long poſſeſſion, the Diſſeiſee could not have entred upon him. (b) Likewiſe the Diſſeiſee could not have entred upon the Feoffee of the Diſſeiſor, if he had continued a year and a day in quiet poſſeſſion. But the Law is changed in both theſe caſes, only the dying ſeiſed being an act in law, doth hold at this day, and this ſeemeth to be very ancient, for this was the law before the Conqueſt. (c) Porro autem quam maritus ſine lite & controverſia ſedem incoluerit, eam conjux & proles ſine controverſia poſſidento, ſiqua in illum lis fuerit illata viventem, eam hæredes ad ſe (perinde atque is vivus) accipiunto.

And one of the reaſons of this ancient Law may be, that the Heir cannot ſuddenly by intendment of law, know the true ſtate of his Title. And for that many advantages follow the poſſeſſion and Tenant, the law taketh away the entry of him that would not enter upon the Anceſtor, who is preſumed to know his Title, and driveth him to his action againſt the Heir that may be ignorant thereof.

21. H. 7. 12. 40. E. 3. 24.

¶ *Et morust de tiel eſtate ſeiſie.* To a diſcent that taketh away an entry a dying ſeiſed is neceſſary, as here it appeareth, but a man to other purpoſes may have Lands by diſcent, though his Anceſtor died not ſeiſed, as hath been ſaid before.

33. E. 3. gard. 162. 6. H. 4. 4. 9. E. 36. 15. E. 4. 14. F. N. B. 143. q. 7. H. 4. 12. 5. 2. Aſſ. p. 9. 21. E. 3. 2.

¶ *Des terres ou tenements.* That is of ſuch tenements as be corporeal, and do lie in livery, and not of Inheritances, which lie in grant, as Advowſons, Rents, Commons in groſs, and ſuch like, which be Inheritances Incorporeal, and yet are included within this word (tenements.) For diſcents of them do not put him that right hath to an Action, and the reaſon of this diverſity is, for that houſes ſerve for the habitation of men, and lands to be manured for their ſuſtenance, and therefore the Heir after a diſcent ſhall not be moleſted or diſturbed in them by entry.

¶ *Eſt per un auter diſſeiſie.* The like law is, of an abatement or intruſion, and of their Feoffees, or Donees, &c.

Upon the words of Littleton a diverſity may be collected, that if a recovery be had by A. againſt

gainſt B. and before execution B die ſeiſed, this Diſcent ſhall not take away the entry of the Recoveror. But if after execution B. had diſſeiſed the Recoveror and died ſeiſed, this diſcent ſhall take away the entry of the Recoveror within the expreſs words of Littleton: and ſo it is in caſe of a Fine. 33.E.3.tit.3.entry con. 51.45.E.3 quare Imp.139. 27 E.2.88. 9H.6.49. 21.H.6.17. 5.E.4.6. 12.E.4.19.3.H.7.3. 6 E.4.11.7.H 7 15. 5.H 7.21. 10.H.7.5.b.

(n) A recovery is had againſt Tenant for life, where the remainder is over in Fee, Tenant for life dieth, he in remainder entreth before execution, and dieth ſeiſed, the entry of the Recoveror is lawful, becauſe he is privy in eſtate, otherwiſe it is if the Diſcent had been after execution. (n)5.H.7.2.

A. recovereth an Advowſon againſt B. in a writ of right, and hath judgment final, the Incumbent dieth. B. by uſurpation preſents to the Church, and his Clark is admitted and inſtituted, B. dieth, A. is put out of poſſeſſion, and the heir of B. is not ſo bound by the judgment either in bloud or eſtate, but that he ſhall preſent; (o) B. levy a fine to A. of an Advowſon to him and his heirs, after the Church becomes void. B. preſents by uſurpation, and his Clark is admitted and inſtituted, this ſhall put A. the Conuſee out of poſſeſſion. And the reaſon of theſe two caſes is, for that at the Common Law, every preſentation to a Church did put the righteful Patron out of poſſeſſion, and did put him to his writ of right, whether the preſentation were by title or without, and therefore albeit the uſurpation were in both the ſaid caſes before execution, yet it put the righteful Patron out of poſſeſſion. So note a diverſity between a recovery of Land, and of an Advowſon. 45.E.3.quare Imp. 139. (o)8 E.2.quare Imp. 160.

¶ *Lentrie le diſſeiſee eſt tolle.* Here is one of the privileges which the Law giveth to the heir by diſcent of Houſes and Lands.

(p) If the Common Law if the Diſſeiſor, Abator, or Intrudor had died ſeiſed ſoon after the wrong done, the Diſſeiſee and his heirs had been barred of his and their entry without any time limited by Law, but now by the Statute (q) made ſince Littleton wrote, it is enacted, that except ſuch Diſſeiſor hath been in the peaceable poſſeſſion of ſuch Mannor, Lands, &c. whereof he ſhall die ſeiſed by the ſpace of five years next after ſuch diſſeiſin, &c. without entry or continual claim, &c. that there ſuch dying ſeiſed, &c. ſhall not take away the entry of ſuch perſon or perſons, &c. But after the five years the Diſſeiſee muſt take ſuch continual claim as our Author hath taught us, the learning whereof is neceſſary to be known. And it is ſaid that Abators and Intrudors are out of this Statute, becauſe the Statute is penal, and extends only to a Diſſeiſor, and that was the moſt common miſchief. Et ad ea quæ frequentius accidunt jura adaptantur. (p) Le ſtatute de 32.H.8 cap. 33. Vide Sect. 422, 426. (q) 37.H.6.1.

The Feoffee of a Diſſeiſor is out of the ſaid Statute, and remains as at the Common Law. But to a Diſſeiſor, the Statute is taken favourably for advancement of the ancient right of, whether the diſſeiſin be without force, or with force, it is within the Statute. And albeit the Statute ſpeak of him that at the time of ſuch Diſcent had title of entry, &c. or his heirs, yet the ſucceſſors of bodies Politique or Corporate, ſo you hold your ſelf to a diſſeiſin, are within the remedy of this Statute, for the Statute extendeth clearly to the Predeceſſor, being diſſeiſed; and conſequently without naming of his Succeſſor extendeth to him, for he is the perſon that at the time of ſuch Diſcent had title of entry. Pl.Com.47.in Wimbeſhes caſe. Mich.4.& 5. Eliz. Dier 219. acc.

But if a man make a leaſe for life, and the leſſee for life is diſſeiſed, and the Diſſeiſor die ſeiſed within five years, the Leſſee for life may enter; but if he die before he doth enter, it is ſaid that the entry of him in the Reverſion is not lawful, becauſe his entry was not lawful upon the Diſſeiſor at the time of the Diſcent as the Statute ſpeaketh. But if Leſſee for life had dyed firſt, and then the Diſſeiſor had dyed ſeiſed, he in the Reverſion had been within the remedy of the Statute, becauſe he had title of entry at the time of the Diſcent, as the Statute ſpeaketh, and ſo within the expreſs letter of the Statute, albeit, the Diſſeiſin was not immediate to him, and the like is to be ſaid of a remainder, &c. Vide Pl.Com.47 ubi ſupra.

¶ *Brieſe dentrie ſur diſſeiſin.* Breve de ingreſſu ſuper diſſeiſinam. F.N.B.191.

Of this writ ſomewhat ſhall be ſaid in the next Section.

Sect. 386.

¶ Diſcēts e taile que tollēt entries ſont, ſicome home eſt diſſeiſie, e

Diſcents in tail which take away Entries are, as if a man be diſſeiſed, and the

¶ *Moruſt de tiel eſtate ſeiſie.*

If a Diſſeiſor make a gift in tail, and the Donee diſcontinueth in fee, and diſſeiſe

the Diſcontinuee, and dieth ſeiſed, this diſcent ſhall not take away the entry of the Diſſeiſee for the diſcent of the fee ſimple is baniſhed and gone, by the Remitter, and albeit the iſſue be in by force of the eſtate tail, yet the Donee died not ſeiſed of that eſtate, and of neceſſity there muſt be a dying ſeiſed, as hath been ſaid, which is a point worthy of obſervation, and implyeth many things.

¶ *En ceſt caſe lentrie le diſſeiſee eſt tolle.*

9.E.7.24. If a Diſſeiſor make a gift in tail, and the Donee hath

le diſſeiſor dona m̃ la terre a un auter en le taile, & le tenant en le tail' ad iſſue & mozuſt de tiel eſtate ſeiſie, & iſſue enter, en ceſt caſe lentre l' diſſeiſee eſt tolle, & il eſt mis de ſuer envers iſſue de l' tenant ẽ taile un bzieue Dentre ſur diſſeiſin.

diſſeiſor giveth the ſame land to another in tail, and the tenant in tail hath iſſue and dieth of ſuch eſtate ſeiſed and the iſſue enter, in this caſe the entrie of the diſſeiſee is taken away & he is put to ſue againſt the iſſue of the tenant in tail a writ of *Entrie ſur diſſeiſin.*

iſſue and dieth ſeiſed, now is the entry of the Diſſeiſee taken away, but if the iſſue die without iſſue, ſo as the eſtate tail which diſcended is ſpent, the entry of the Diſſeiſee is revived, and he may enter upon him in the reverſion or remainder.

13 H.4 8 9. 33.H.6.5.b.per Moyle. 34.H.6.11.2.perCuriam Vide Sect.395. So if there be Grandfather, Father and Son, and the Son diſſeiſeth one, & infeoffeth the Grandfather who dieth ſeiſed, and the land diſcendeth to the Father, now is the entry of the Diſſeiſee taken away; but if the Father dieth ſeiſed, and the land diſcendeth to the Son, now is the entry of the Diſſeiſee revived, and he may enter upon the Son, who ſhall take no advantage of the diſcent, becauſe he did the wrong unto the Diſſeiſee. But in the caſe aforeſaid ſome have ſaid, that where after ſuch diſcent to the Father, he made a Leaſe to the Son for term of another mans life upon whom the Diſſeiſee entred, that the Son brought an Aſſiſe and recovered, and the reaſon that hath been yielded is for that the Son had not the Fee ſimple which he gained by diſſeiſin, but is a purchaſer of the Free-hold only from the Father, and the diſcent remain not purged. Contrary it were, as it is there ſaid, if the Son were heir to the Diſcent. But the Book cited there in Fitzherb. tit. Title Placit. 6. doth not warrant that caſe, and I hold the law to be contrary, viz. that the Diſſeiſee in that caſe ſhall enter upon the Diſſeiſor, aſwel as if the Father had conveyed the whole Fee ſimple to the Son, for in that caſe alſo the diſcent to the Father is not purged. If a Diſſeiſor make a leaſe to an Infant for life, and he is diſſeiſed, and a diſcent caſt, the Infant enters, the entry of the Diſſeiſee is lawful upon him. More ſhall be ſaid of the like matter in this Chapter hereafter in his proper place, Sect. 393, 395.

13.E.3.Br.tit.Entry Cong.127.

¶ *Brieſe dentrie ſur diſſeiſin.* Breve de ingreſſu ſuper diſſeiſinam.

19.H.6.56.9.H.5.9. This Writ lieth only upon a diſſeiſin made to the Demandant or to ſome of his Anceſtors, & of this writ there be four kinds: The firſt is a writ that lieth for the Diſſeiſee againſt the Diſſeiſor upon a diſſeiſin done by himſelf, & this is called a writ of entry in the nature of an Aſſiſe. The ſecond is a writ of Entrie ſur diſſeiſin en le Per whereof Littleton here ſpeaketh, for the heir by diſcent is in the Per by his Anceſtor: ſo it is if the Diſſeiſor make a feoffment in fee, a gift in tail, or a leaſe for life, for they are in the Per by the Diſſeiſor. (a) The third is a writ of Entry Sur diſſeiſin en le Per & Cui, as where A. being the Feoffee of D. the Diſſeiſor maketh a feoffment over to B. there the Diſſeiſee ſhall have a writ of Entry Sur diſſeiſin of Lands, &c. in which B. had no entry but by A. to whom D. demiſed the ſame, who unjuſtly and without judgment diſſeiſed the Demandant. Theſe are called Gradus, Degrees, which are to be obſerved, or elſe the writ is abatable, for Sicut natura non facit ſaltum, ita nec lex.

Bracton, lib.5.fol.219 b. & 318 Brit.fol.264,265. Fleta, lib.5.cap.35. 5.E.3.216. (a) 22.E.3.1,b.7.E.3.25 F.N.B.192.

The fourth is a writ of Entrie ſur diſſeiſin in le poſt, which lieth when after a diſſeiſin, the land is removed from hand to hand beyond the degrees, and it is called In le poſt, becauſe the words of the writ be Poſt diſſeiſinam quam D. injuſte, &c. fecit, &c. the forms of theſe writs you ſhall read in the Regiſter and F.N.B. and therefore it were needleſs to recite them here. So then a degree is of two ſorts, either by act in law, whereof Littleton here putteth an example of a Diſcent, or by act of the party, by lawful conveyance as is aforeſaid. But it is to be underſtood, that at the Common Law, if the lands were conveyed out of the degrees, the Demandant was driven to his writ of right, in reſpect of ſuch long poſſeſſion in ſo many mens hands, which the law doth ever reſpect and favour. And therefore by the Statute (a) of Marlebridge, the writ of Entrie in le Poſt is given, Proviſum eſt etiam quod ſi alienationes fiant de quibus breve de ingreſſu dari conſuevit, per tot gradus fiant, per quot breve illud in forma prius uſitata fieri non poſſit, habeant conquerentes breve ad recuperandam ſeiſinam ſuam ſine mentione graduum,

14.H.4.40.

(a) Marlbr.cap.29. 24.E.3.70.

graduum, ad cujuſcunque manus per hujuſmodi alienationes res illa devenerit, per breve originale, & per commune conſilium domini regis inde providendum, &c.

Now it is neceſſary to be known, what doth make a degree. Firſt, No eſtate gained by wrong doth make a degree, and therefore neither Abatement, Intruſion, or Diſſeiſin upon Diſſeiſin, doth make a degree. Neither doth every change by lawful title work a degree, as if a Biſhop or an Abbot, or the like, diſſeiſe one and die, where his ſucceſſor is in by lawful title, for though the parſon be altered, yet the right remains where it was, viz. in the Church, and both of them ſeiſed in the ſame right, viz. in the right of the Church, and therefore in that very caſe Bracton (b) demands the queſtion, An faciunt gradum de Abbate in Abbatem ſicut de hærede in hæredem? Et videtur quod non magis quam in computatione diſcenſus, quia etſi alternetur perſona, non propter hoc alternatur dignitas, ſed ſemper manet. And herewith agreeth (c) Fleta.

Bracton, ubi ſupra. Britton, ubi ſupra. Fleta, ubi ſup a. 4.E.2 bre.750. 21.H.6.8.

(b) Bracton, lib.4.fol. 321.

Alſo an eſtate made to the King doth make no degree, and therefore if a Diſſeiſor by Deed inrolled conbey the land to the King, and the King by his charter granteth it over, the Diſſeiſee cannot have a Writ of Entrie in le Per & Cui, but in le Poſt, for the Kings charter is ſo high a matter of record, as it maketh no degree.

5.E.3.38. 5.E.2 entry 66. 11.H.4.83.

(c) Fleta, lib.3.cap.14. 3.E.3 entry 11. 22.E.3.7. F.N.B.191 k.

Alſo an eſtate of a Tenant by the curteſie, or of the Lord by Eſcheat, or of an execution of an uſe, by the Statute of 27.H.8. or by judgment or recovery, or of any others that come in in the Poſt, work no degree. (d) But a tenancy in Dower by aſſignment of the heir, doth work a degree, becauſe ſhe is in by her husband, but aſſignment of Dower by a Diſſeiſor, worketh no degree, but is in the Poſt, as hereafter ſhall be ſaid in his proper place.

5.E.2.entry 66. 7.E.3.360. (d) 36.H.6.dower 30.

When the degrees are paſt, ſo as a Writ of entry in the Poſt doth lie, yet by event it may be brought within the degrees again, as if the Diſſeiſor infeoffe A. who infeoffes B. who infeoffes C. or if the Diſſeiſor die ſeiſed, and the land diſcend to A. and from him to C. now are the degrees paſt, and yet if C. infeoffe A. or B. now it is brought within the degrees again.

44.E.3.4.5.39.E.3.25. 5.H.7.6.3.H.6.33.

If the Diſſeiſor make a leaſe for life, the remainder in fee, Tenant for life dieth, he in the remainder is in the Per, becauſe he now claimeth immediately from the Diſſeiſor, and both theſe eſtates make but one degree.

50.E.3.27.

Note there be divers other Writs of entry, beſides this Writ of entry Sur diſſeiſin, whereof Littleton here ſpeaks, as a Writ of Entry Ad terminum qui præteriit, in caſu proviſo, in conſimili caſu, ad communem legem, ſine aſſenſu capituli, dum fuit infra ætatem, dum non fuit compos mentis, cui invita, Sur cui in vita, Intruſion, Ceſſavit, and the like, and that which hath been ſaid of one, may be applied to all.

Sect. 387.

¶ ET nota que en tiels diſcents, que tollent entries, il cobient que home moyſt ſeiſie en ſon demeſne come de fee, ou en ſon demeſne come de fee taile. Car un moyant ſeiſie pur terme de vie, ne pur terme dauter vie, ne unques tollent entre.

AND note that in ſuch diſcents which take away entries, it behoveth that a man die ſeiſed in his demeſne as of fee, or in his demeſne as of fee tail; for a dying ſeiſed for term of life, or for term of another mans life doth never take away an entry.

¶ If a diſſeiſor make a leaſe to a man for his heirs during the life of I.S. and the Leſſee dieth, living I.S. this ſhall not take away the entry of the Diſſeiſee, becauſe he that died ſeiſed had but a free-hold only, and heirs in that caſe were added to prevent the occupant, for the heir in that caſe ſhall not have his age as it was adjudged in (d) Limbs caſe.

Dier, 8.Eliz.253. 7.H.4.46.8 H.4.15. 17.E.3.48.11.H.4.42.

(d) Paſch.16.Eliz.in Communi Banco.

But if he in the reverſion diſſeiſe his Tenant for life, and dieth ſeiſed, this diſcent ſhall take away the entry of the Tenant for life.

3.E.3.tit.Entr.Cong. 58.F.N.B.145.m. 9.H.7.25.a.

So it is if there be Tenant for life, the remainder in tail, the remainder in fee, and Tenant in tail diſſeiſeth the Tenant for life and dieth ſeiſed, this ſhall take away the entry of the Tenant for life.

9.H.7.25.

But if the Kings Tenant for life be diſſeiſed, and the Diſſeiſor die ſeiſed, this diſcent ſhall not take away the entry of the Leſſee for life, becauſe the Diſſeiſor had but a bare eſtate of freehold during the life of the Leſſee, and Littleton ſaith, that a diſcent of an eſtate for term of another mans life ſhall not take away an entry.

¶ *En ſon demeſne come de fee.* If an Infant be diſſeiſed, and the Diſſeiſor die ſeiſed,

Temps E.1. Relief. 12. Der 14. Eliz. 08. 40. E 3 9 b. (a) 24. E. 3. 47.

ſeiſed, and after the infant cometh to full age, and the heir of the Diſſeiſor die before he entreth, albeit he died not ſeiſed of an actual ſeiſin, but of a ſeiſin in law, yet that dying ſeiſed ſhall take away the entry of the Diſſeiſee. (a) And yet in pleading the ſecond heir ſhall (as hath been ſaid) make himſelf heir to the diſſeiſor, and that land ſhall not be recovered in value for the warranty made of other lands by the firſt heir; But though the firſt heir had but a ſeiſin in law, yet he is within the words of Littleton, For he was ſeiſed and died ſeiſed in his demeſne as of fee.

Sect. 388.

AND therefore if a Diſſeiſor make a Leaſe for years, and die ſeiſed of the Reverſion, this diſcent ſhall take away the entry of the Diſſeiſee, becauſe he dyed ſeiſed of the Fee and Franktenement. Like law it is if the land be extended upon a Statute, Judgment, or Recogniſance, and ſo it is in caſe of a Remainder.

But if he had made a leaſe for life, and die ſeiſed of the Reverſion, this diſcent ſhall not take away the entry of the Diſſeiſee, for that though he had the Fee, yet he had not the Franktenement.

Vide Sect. 302. 393. So it is of a Tenant in Tail, mutatis mutandis, and note the law doth ever give great reſpect to the Eſtate of Freehold, though it be but for term of life.

¶ Item un diſcent de reverſion, ou de Remainder, ne unques tollent entrie, iſſint que en tiels caſes que tollent entries, per force de diſcents, il covient que celuy que morust ſeiſie ad Fee et Franktenement al temps de ſon morant, ou Fee taile & Franktenemt al temps de ſon morant, ou autrement tiel diſcent ne tolle entre.

ALſo a Diſcent of a Reverſion or of a Remainder, doth not take away an Entry. So as in thoſe caſes which take away Entries by force of Diſcents, it behoveth that he dieth ſeiſed of Fee and Freehold at the time of his deceaſe, or of Fee tail and Freehold at the time of his death, or otherwiſe ſuch diſcent doth not take away an Entry.

If a Diſſeiſor make a leaſe for term of his own life, and dieth, this diſcent ſhall not take away the entry of the Diſſeiſee, for though the Fee and Franktenement diſcend to the heir of the Diſſeiſor, yet the Diſſeiſor died not ſeiſed of the Fee and Franktenement: and Littleton ſaith, that unleſs he hath the Fee and Franktenement at the time of his deceaſe, ſuch diſcent ſhall not take away the entry.

Sect 389.

BY this it appeareth, that a Diſcent in the Collateral Line doth take away an entrie, as well as in the Lineal.

¶ *Moront ſeiſie, &c.* Here (&c.) implieth Fee ſimple, or Fee tail.

¶ Item come eſt dit de Diſcents que diſcendont al iſſue de ceux que moront ſeiſies, &c. Meſme la Ley eſt lou ils nont alcun iſſue, mes les tenements diſcendont al frere, ſoer, uncle, ou auter coſin de celuy que morust ſeiſie.

ALſo as it is ſaid of Diſcents which diſcend to the Iſſue of them which die ſeiſed, &c. the ſame Law is where they have no iſſue, but the lands diſcend to the Brother, Siſter, Uncle, or other Couſin of him which dieth ſeiſed.

Sect.

Sect. 390.

¶ Item ſi ſoit Seignior & tenant, & le Tenant ſoit diſſeiſie, & le diſſeiſor aliena a un auter en fee, & lalienee devie ſans heire, & le Seignior enter come en ſon eſcheat, en teſt caſe le Diſſeiſee poit enter ſur le Seignior, pur ceo que le Seignior ne vient a le Terre per diſcent, mes per voy deſcheat.

ALſo if there be Lord and Tenant, and the Tenant be diſſeiſed, and the Diſſeiſor alien to another in Fee, and the Alienee die without iſſue, and the Lord enter as in his Eſcheat: In this caſe the Diſſeiſee may enter upon the Lord, becauſe the Lord cometh not to the Land by Diſcent, but by way of Eſcheat.

¶ *Le Diſſeiſee poit enter ſur le Seignior, &c.* For albeit the alienee of the Diſſeiſor die ſeiſed, & the Lord by Eſcheat cometh to the Land by Act in Law, yet becauſe the Land diſcendeth not to him, the entry of the Diſſeiſee in reſpect of the Eſcheat ſhall not be taken away. For a dying ſeiſed and a Diſcent, & not a dying ſeiſed and an Eſcheat, doth take away the entry: for (as hath been ſaid) the Diſcent is the worthier title. But in that caſe, if the Lord by Eſcheat die ſeiſed, and the Land diſcend to his Heir, that diſcent ſhall take away the entry of the Diſſeiſee. So it is if the Diſſeiſor die ſeiſed, and the Heir of the Diſſeiſor dieth without Heir, the Diſſeiſee cannot enter upon the Lord by Eſcheat. So as there is a diverſity as touching the diſcent, when after a diſcent caſt, the Iſſue in Tail dieth without Iſſue, and when after a diſcent caſt, the Heir in Fee ſimple dieth without Heir, for he in the Reverſion, or Remainder, upon a ſtate tail claimeth in above the ſtate tail, but the Lord by Eſcheat claimeth in under the Heir in Fee ſimple. 37. H. 6. 1. 9. H. 7. 24. b.

Sect. 391.

¶ Item ſi home ſeiſie de certaine Terre en fee, ou en fee taile, ſur condition de render certaine rent, ou ſur auter condition, coment que tiel Tenant ſeiſie en fee, ou en fee taile, morult ſeiſie, uncore ſi le condition ſoit enfreint en lour dies, ou apres lour deceaſe, ceo ne tollera pas lentrie del Feoffor, ou del Donor, ou de lour heires, pur ceo que le Tenantie

ALſo if a man be ſeiſed of certain land in Fee or in Fee tail, upon condition to render certain rent, or upon other condition, albeit ſuch Tenant ſeiſed in Fee or in Fee Tail, dieth ſeiſed, yet if the condition be broken in their lives, or after their deceaſe, this ſhall not take away the Entry of the Feoffor or Donor, or of their heirs, for that the Tenancy is char-

¶ Upon theſe two Actions is to be obſerved a diverſity between a right, for the which the law giveth a remedy by action, and a title, for the which the law giveth no remedy by action, but by entry only. For example. The Feoffor upon Condition in this caſe hath a right to the land, and therefore his entry may be taken away, becauſe he may recover his right by action, but the Feoffor or Donor that hath but a Condition, his title of entry cannot be taken away by any diſcent, becauſe he hath no remedy by action to recover the land, and therefore if a Diſcent ſhould take away his entry, it ſhould bar him for ever. And the Law is all one whether the Diſcent were before the condition broken, or after. 33. Aſſ. 11. 24. 21. H. 6. 17. 33. Aſſ. 11. 24.

Alſo

Brooke tit. Mortmain 6. 47. E. 3. 11. 21. E. 3. 17. 40. Aſſ. 13.

Alſo he that hath a title to enter upon a Mortmain, ſhall not be barred by a diſcent, becauſe then he ſhould be without all remedy. And ſo it is in caſe where a woman hath a title to enter, cauſa matrimonii prælocuti, no diſcent ſhall take away her entry, becauſe ſhe hath but a title, and no remedy by action.

If a man be ſeiſed of lands in fee, and by his laſt will in writing deviſeth the ſame to another in fee, and dieth, after whoſe deceaſe the Freehold in Law is caſt upon the deviſee, and the heir before any entry made by the Deviſee, entreth, and dieth ſeiſed, this diſcent ſhal not take away the entry of the Deviſee, for if the diſcent, which is an act in law, ſhould take away his entry, the law ſhould bar him of his right, and leave him utterly without remedy. And ſo it is of him, that entreth for conſent to a raviſhment, & ſo it was reſolved in the caſe of Martin Trotte of London, (n) Paſchæ 32. El. in Com. Banco. And accordingly was the opinion of the Court of Common Pleas, (o) Paſch. 1. Jac. Reg. To this may be added as a like caſe, the Kings Patentee before he enter, &c. Another reaſon wherefore a diſcent ſhall not take away the entry of him that hath a title to enter by force of a condition, &c. is, for that the Condition remains in the ſame eſſence that it was in at the time of the creation of it, and cannot be deveſted or put out of poſſeſſion as lands and tenements may.

(n) Paſch. 32. Eliz. in Communi Banco. 7. R. 2. Scir. Fac. 3. 41. E. 3. 14. per Finchden (o) Paſch. 1. Jac. Regis in Communi Banco.

Sect. 392.

¶ Item ſi tiel tenant ſur condic̃ ſoit diſſeiſie & le diſſeiſor devie ent ſeiſie, & a la ẽ deſcendiſt al heire le diſſeiſor, ore le entrie le tenant ſur condition, que fuiſt diſſeiſie eſt toll: Mes uncore ſi le condition ſoit enfeeint, donque poit le Feoffor ou le Donor que fierent eſtate ſur condition, ou lour heirs enter, Cauſa qua ſupra.

Alſo if ſuch Tenant upon Condition be diſſeiſed, and the Diſſeiſor die thereof ſeiſed, and the land diſcend to the Heir of the Diſſeiſor, now the entry of the Tenant upon condition, who was diſſeiſed, is taken away. Yet if the Condition be broken, the Feoffor or the Donor which made the eſtate upon condition, or their heirs may enter, *Cauſa qua ſupra.*

Sect. 393.

¶ Devie ſeiſie, *&c.* viz. in fee ſimple, or in fee tail.

¶ *Et ſon heire enter, &c.* So as he hath an actual fee ſimple.

¶ *De la* 3. *part de les tenements, &c.* id eſt, in ſeveralty.

By this Section it appeareth, that an entry being taken away by the diſcent, is revived by the endowment albeit the Tenant in Dower ſhall have it but for her life. And the cauſe is, for that although the heir entred, yet

¶ Item ſi un diſſeiſor devie ſeiſie, &c. & ſon heire enter, &c. le quel endowa la feme le diſſeiſor d̃ la tierce part d̃ les tenements, &c. En ceſt cas quant a ceſt tierce part que eſt aſſigne a la feme en dower maintenant apres ceo que la feme enter, & ad le

Alſo if a Diſſeiſor die ſeiſed, &c. and his heir enter, &c. who indoweth the wife of the Diſſeiſor of the third part of the Land, &c. In this caſe as to this part which is aſſigned to the wife in Dower, preſently after the wife entreth and hath the poſſeſſion of the ſame third

poſ-

poſſeſſion de meſme la tierce part, le diſſeiſee poit loyalment enter ſur la poſſeſſion la feme en meſme la tierce part. Et la cauſe eſt, pur ceo que quant la feme ad ſon dower, el ſerra adjudge eins immediate per ſon baron, & nemy per lheire, & iſſint quāta le franktenement de meſme la tierce part, le diſcent eſt defeate. Et iſſint poies veir, que devant le endowint le diſſeiſee ne poit enter en alcun part, &c. & apres le dowment il poit enter ſur la fee, &c. meſs uncore il ne poit enter ſur les auters deux parts que lheire le Diſſeiſor ad p le Diſcent.

part, the diſſeiſee may lawfully enter upon the poſſeſſion of the Wife into the ſame third part. And the reaſon is, for that when the Wife hath her dower, ſhe ſhall be adjudged in immediately by her Husband and not by the Heir. And ſo as to the Freehold of the ſame third part, the Diſcent is defeated. And ſo you may ſee that before the endowment the Diſſeiſee could not enter into any part, &c. and after the endowment he may enter upon the wife, &c. but yet he cannot enter upon the other two parts which the Heir of the Diſſeiſor hath by the Diſcent.

when the wife is endowed ſhe ſhall not be in by the heir, (a) but immediately by her Husband being the Diſſeiſor, who is in for her life by a title Paramount the dying ſeiſed and diſcent, and therefore in judgment of law, the diſcent as to the Freehold, and the poſſeſſion which the heir had is taken away by the endowment; for that the law adjudgeth no mean ſeiſin between the husband and the wife.

(a) 38 E. 2 Entry 75. 19. E. 2. Dower 151. 5 E. 2. Entrie 60. 24. E. 3. 32. 40. 38. Aſſ. Pl. 26. 43 E. 3. 32. 45. E. 3. 9. b. 11 H. 4 11. 7. H 5. 3. 12. E. 3 27, 28. 36. H. 6. Dower 30.

If there be Lord, Meſne and Tenant, the Meſne doth grant to the Tenant to acquit him againſt the Lord and his heirs, the Lord dies, his Wife hath the Seign ory aſſigned to her for her dower, and diſtrains the Tenant; albeit the grant was to acquit him againſt the Lord & his heirs only, yet becauſe ſhe continued the eſtate of her husband, and the reverſion remained in the heir, this grant of acquital did extend to the wife, which is a notable caſe. 31. E. 1. Meſne 55.

If after the dying ſeiſed of the Diſſeiſor, the Diſſeiſee abate, againſt whom the wife of the Diſſeiſor recover by confeſſion in a writ of dower, in that caſe, though the Diſcent be avoided as Littleton here ſaith, yet the Diſſeiſee ſhall not enter upon the Tenant in Dower, becauſe the recovery was againſt himſelf; but if he had aſſigned Dower to her in paiis, ſome ſay he ſhould enter upon her.

A man makes a gift in tail reſerving twenty ſhillings Rent, and dies, the Donee takes wife, and dieth without Iſſue, the heir of the Donor entreth and endoweth the Wife, ſhe is ſo in of the eſtate of her husband, that albeit the eſtate tail be ſpent, and the rent reſerved thereupon determined, yet after ſhe be endowed, ſhe ſhall be attendant to the heir in reſpect of the ſaid rent. And ſo it is of Lord and Tenant, the wife that is endowed ſhall be attendant for the due ſervices, but if any ſervices be incroached, albeit that incroachment ſhall bind the heir, yet the wife ſhall be contributory but for the ſervices of right due. 10. E. 3. 26.

¶ *Iſſint poies veir que devant le dowment, le diſſeiſee ne poit enter, & apres le endowment il poit enter, &c.* The like hath been ſaid before in this Chapter, Sect. 386. where the entry of the Diſſeiſee may be taken away for a time, and by matter ex poſt facto revived again.

Nota, albeit the Diſſeiſor after a diſcent taketh to him but an eſtate for life, yet when the Diſſeiſee doth enter upon him, he ſhall thereby deveſt the reverſion, for the eſtate of freehold is that whereupon a Præcipe doth lie, and therefore the entry of the Diſſeiſee is as available in law, as if he had recovered it in a Præcipe. And ſo it is if a Diſſeiſor make a leaſe for life, and grant the Reverſion to the King, the entry of the Diſſeiſee upon the Tenant for life ſhall deveſt the Reverſion out of the King in the ſame manner, as if the Diſſeiſee had recovered the lands againſt the Tenant for life in a Præcipe. Vide Sect. 302, 383. 25. E. 3 48. Pl. Com. 553.

Sect. 394.

¶ *EN ceſt caſe jeo poy enter ſur le poſſeſſion liſſue, &c.*

Vide 9. H. 7. 24. & 37. H. 6. 1.

For here was but a Diſcent of a Reverſion at the time of the dying ſeiſed, for the eſtate of the tenant by the courteſie, had commencement by the having of iſſue, and is conſummate by the death of the wife, ſo as the fee & frank-tenement did not after the deceaſe of the Wife diſcend to the Heir, and albeit the Tenant by the courteſie dieth afterwards, & that the frank-tenement is caſt upon the Heir, ſo as now he hath the fee and frank-tenement by diſcent, yet becauſe the heir came not to the fee and frank-tenement at once immediately after the deceaſe of the wife ſuch a mediate Diſcent ſhall not take away the entry of the diſſeiſee. On the other ſide, an immediate diſcent may take away an entry for a time, and mediately may be avoided by matter ex poſt facto, as hath been ſaid. But if a dying ſeiſed taketh not away the entry of him, that right hath at the time of the diſcent, it ſhall not by any matter ex poſt facto take away his entry.

See before the Chapter of Homage.

¶ Item, ſi un feme ſoit ſeiſie de terre en fee, dont jeo aye droit & title dentre, ſi la feme prent baron, & ont iſſue enter eux, & puis la feme devie ſeiſie, & apres le baron devie, & iſſue enter, &c. en ceſt caſe jeo poy enter ſur le poſſ. iſſue, pur ceo que iſſue ne vient a les tenemts immediate per Diſcent apres la mort ſa mere, &c. eins per le mort del pier.

¶ Contrarium tenetur P. 9. H. 7. per tout le court, & M. 37. H. 6. ¶.

ALſo if a woman be ſeiſed of land in fee, whereof I have right & title to enter, if the woman take husband and have iſſue between them, and after the wife die ſeiſed, and after the husband die, and the iſſue enter, &c. In this caſe I may enter upon the poſſeſſion of the iſſue, for that the iſſue comes not to the lands immediately by Diſcent after the death of the mother, &c. but by the death of the father.

¶ *Contrarium tenetur P. 9. H. 7. per tout le court, & M. 37. H. 6. ¶.*

If a Diſſeiſor die without heir, his Wife privement enſeint with an iſſue, and after the iſſue is born, who entreth into the land, he hath the land by diſcent, and yet thereby the entry of the Diſſeiſee ſhall not be taken away, becauſe as Littleton here ſaith, the iſſue cometh not to the lands immediately by Diſcent, after the deceaſe of the Father.

And ſo it is if a Diſſeiſor make a gift in tail, the remainder in fee, and the Donee dieth without iſſue, leaving his Wife privement enſeint with a Son, and he in the remainder enters, and after the Son is born, who entreth into the land, this diſcent ſhall not take away the entry of the Diſſeiſee, Cauſa qua ſupra.

¶ *Contrarium tenetur, &c.* This is an addition, and therefore to be paſſed over. And at this day, this caſe of Littleton is holden for cleer law.

Sect. 395.

¶ Item ſi un diſſeiſor enfeoffa ſon pier en fee, & le pier morust de tiel eſtate ſeiſie, p ceſt les tents diſcendont a l' diſſeiſor come fits & heire, &c. en ceſt caſe l' diſſeiſee bien poit enter ſur le diſſeiſor, nient obſtant le Diſcent,

ALſo if a Diſſeiſor enfeoffe his father in fee, and the father die ſeiſed of ſuch eſtate, by which the lands deſcend to the Diſſeiſor, as ſon and heir, &c. In this caſe the Diſſeiſee may well enter upon the Diſſeiſor, notwithſtanding the pur

pur ceo que quant al diſſeiſin, le diſſeiſor ſerra adjudge eins forſque come diſſeiſor, nient obſtant le diſcent, Quia particeps criminis.

diſcent for that as to the diſſeiſin, the diſſeiſor ſhall be adjudged in but as a diſſeiſor notwithſtanding the Diſcent, *Quia particeps criminis.*

¶ Of this ſufficient hath been ſaid before in this Chapter, Sect. 386. And regularly it is true, that albeit a Diſcent be caſt, and the entry of the Diſſeiſee taken away, yet if the Diſſeiſor cometh to the land again, either by diſcent or purchaſe, of any eſtate or freehold which is implied in the (&c.) the Diſſeiſee may enter upon him, or have his aſſiſe againſt him, as if no diſcent or mean conveyance had been, Quia particeps criminis.

15.E.4.23.a.11.E.4.2. 18 E.4.25.a.33.H.6.5 b. 34 H.6.11.12.H 8.9. 24.H.8.3.9 18.H 8 5. 5.H 7.29.Aſſ.54. 39.E.3.23.26.

Sect. 396, 397.

¶ Item ſi home ſeiſie de certaine terre & ſee ad iſſue deux fits, & morust ſeiſie, et le puiſne fits entra p abatement en la terre, quel ad iſſue, et de ceo morust ſeiſie, & les tenements diſcendont al iſſue, et l'iſſue entra en la terre en ceſt caſe le fits eigne, ou ſon heire, poit enter p la ley ſur iſſue del fits puiſne, nient contreſteant le diſcent, pur ceo que quant le fits puiſne abatiſt & la terre apres le mort ſon pier devant aſcun entrie per le fits eigne fait, la ley intenda que il entra en claymant come heyre a ſon pier, et p ceo que leigne fits clayma per meſme le title, ceſtaſ-avoir, come heyre a ſon pier, il & les heires poient enter ſur iſſue de puiſne fits, nient obſtant le diſcent, &c. pur ceo que ils clay-

ALſo if a man ſeiſed of certain land in fee have iſſue two ſons, and die ſeiſed, and the younger ſon enter by abatement into the land and hath iſſue, and dieth ſeiſed thereof, and the land deſcend to his iſſue, and the iſſue enters into the land; in this caſe the eldeſt ſon or his heir may enter by the Law upon the iſſue of the younger ſon notwithſtanding the Diſcent, becauſe that when the younger ſon abated into the land after the death of his Father before any entry made by the eldeſt ſon, the law intend that he entred claiming as heir to his Father. And for that the eldeſt ſon claims by the ſame title, that is to ſay, as heir to his Father, he and his heirs may enter upon the iſſue of the younger ſon, notwithſtanding the diſ-

¶ *En ceſt caſe le fits eigne, &c poit entrer ſur liſſue del fits puiſne, &c.* And the reaſon hereof is, for that the law intendeth the youngeſt ſon entred claiming the land as heir to his Father, & becauſe the eldeſt Son claimeth alſo by the ſame title, viz. as heir to his father, therefore he & his heirs may enter upon the ſecond ſon & his heirs, in reſpect of the privity of the blood between them, and of the ſame claim by one title, albeit the youngeſt ſon gained a fee ſimple by his entry: for Littleton here calleth it an abatement, which provideth the gaining of a fee ſimple.

And it is to be obſerved that, Aſſiſa mortis anteceſſoris non tenet inter conjunctas perſonas ſicut fratres & ſorores, &c. For theſe are privy in blood, but it lieth againſt ſtrangers, & then damages are to be recovered againſt a ſtranger, but not againſt his brother.

Bract.lib.4.fol.261. 282, 283. Britton,fol.180.181. Fleta,lib.5.cap.1.2, &c. 20.E.3.Darr.preſent 13 12.H 3.Mord.pl.ultim. 13.E.1.Mord.47. 29.Aſſ.11. F.N.B.196.b.

Lands were given to the husband & wife & to the heirs of their two bodies, they had iſſue a daughter, the wife died, the husband had iſſue by another wife four ſons and died, the eldeſt Son abated

Paſch.3.E.3.Coram Rege Kanc.in Theſaur.

abated and died ſeiſed, this Diſcent did take away the entry of the daughters, becauſe they claimed not by one title. And in ancient books the eldeſt ſon is called Hæres propinquus, and the younger ſon Hæres remotus. And albeit the eldeſt ſon hath iſſue and dieth, and that after his deceaſe the youngeſt ſon or his heir entreth, and many diſcents be caſt in his line, yet may the heirs of the eldeſt ſon enter in reſpect of the priority of the bloud, and of the ſame claim by one title; but if the youngeſt ſon make a feoffment in fee, and the feoffee die ſeiſed, that diſcent ſhall take away the entry of the eldeſt, in reſpect that the priority of the bloud faileth. And admit that the youngeſt ſon be of the half bloud to his brother, yet he is of the whole bloud to his father; & therefore if he entreth by abatement, and dieth ſeiſed, it ſhall not bar his elder brother of his entry. But if the eldeſt ſon entreth, & gaineth an actual poſſeſſion & ſeiſin, then the entry of the youngeſt is a diſſeiſin. And then a dying ſeiſed ſhall take away the entry of the eldeſt, for Poſſeſſio terræ muſt be Vacua when the youngeſt ſon enters by abatement, as Littleton ſaith, becauſe he hath more colour in that caſe to claim, as heir to his father, who laſt was actually ſeiſed. Therefore if after the deceaſe of the father, an eſtranger doth firſt enter and abate, upon whom the youngeſt ſon entreth and diſſeiſe him and die ſeiſed, this Diſcent ſhall bind the the eldeſt, for he entred by diſſeiſin, and not by abatement.

8. E. 2. Aſſ. 80.
40. E. 3. 24. b. 29. Aſſ. 24.
Vid. Brooke tit. entry 27

If a man be ſeiſed of lands of the nature of

mont per un meſme title. Et en meſme le maner il ſerra, ũ fueront pluſors diſcents de un iſſue a un auter iſſue del puiſne fits.

cent, &c. becauſe they claim by the ſame title. And in the ſame manner it ſhall be, if there were more diſcents from one iſſue to another iſſue of the younger ſon.

Sect. 397.

¶ MEs en tiel caſe, ũ le pier fuit ſeiſie d certaine terres en fee, & ad iſſue deux fits, & debie, & leignee fits enter, & eſt ſeiſie, &c. & puis le puiſne frere luy diſſeiſit, p quel diſſeiſin il eſt ſeiſie en fee, & ad iſſue, & de tiel eſtat mort ſeiſie, donques leigne frere ne poit entrer, mes eſt mis a ſon briefe. Dentre ſur diſſeiſin, &c. de recoverer la terre. Et la cauſe eſt, p ceo que le puiſne frere vient a les tenements p tortious diſſeiſin fait a ſon eigne frere, & per cel tort la ley ne poit entender que il claime come heire a ſon pier, nient pluis que un eſtrange perſon que eſt diſſeiſie leigne frere q̃ naboit aſcun title, &c. Et iſſint poyes veier la diverſity, lou le puiſne frere enter apres le mort le pier devant aſcun entrie fait per leigne frere en tiel cas, & ou leigne

BUt in this caſe if the father were ſeiſed of certain lands in fee, and hath iſſue two ſons and die, and the eldeſt ſon enter and is ſeiſed, &c. & after the younger brother diſſeiſeth him, by which diſſeiſin he is ſeiſed in fee, and hath iſſue, and of this eſtate dieth ſeiſed, then the elder brother cannot enter, but is put to his Writ of *Entrie ſur diſſeiſin, &c.* to recover the land. And the cauſe is for that the youngeſt brother cometh to the lands by wrongful diſſeiſin done to his elder brother, and for this wrong the Law cannot intend that he claimeth as heir to his father, no more than if a ſtranger had diſſeiſed the elder brother which had no title, &c. And ſo you may ſee the diverſity where the younger brother entreth after the death of the father before any entry made by the elder brother in this

frere

frere enter apres la mort ſon pier, et puis eſt diſſeiſie p̄ le puiſne frere, lou le puiſne frer̄ puis mort ſeiſie.

caſe, and where the elder brother enters after the death of his father, & after is diſſeiſed by the younger brother, where the younger after dieth ſeiſed.

Burgh Engliſh, and hath iſſue two ſons and die, and the eldeſt ſon before any entry made by the youngeſt, entreth into the land by abatement, and dieth ſeiſed, this ſhall not take away the entry of the youngeſt brother. Et ſic de ſimilibus. And theſe and the like caſes are all within the reaſon and rule of our Author. And where our Author ſpeaketh only of an abatement, ſo it is not an intruſion; For if the Father make a leaſe for life, and hath iſſue two ſons and dieth, and the Tenant for life dieth, and the youngeſt ſon intrude, and die ſeiſed, this Diſcent ſhall not take away the entry of the eldeſt. But if the Father had made a leaſe for years, it had been otherwiſe, for that the poſſeſſion of the Leſſee for years maketh an actual freehold in the eldeſt ſon. And it is to be obſerved that the reaſon of Littleton in this caſe (for that both the brethren hold by one title) holdeth alſo in many other caſes.

If two Coperceners make partition to preſent by turn, and one of them uſurp in the turn of the other, this uſurpation ſhall not put the other out of poſſeſſion, becauſe they claim by one title. 22.E.4.4.

If two Coperceners be, and they ſeverally preſent to the Ordinary, yet the Church is not litigious, becauſe they claim all by one title. Doctor & Stud. cap. 30. fol. 117.

If upon a Writ of Diem clauſit extremum, the youngeſt ſon be found heir, the eldeſt ſon had no remedy by the Common Law, becauſe they claimed by one title, but otherwiſe it is, if they claim by ſeveral titles, as it appeareth in our Books. But this is now holpen by a (a) Statute made ſince Littleton wrote. 12.E.4.18. (a) 2.E.6.cap.8. 2.H.7.12 a.

If two Parſons be in debate for tithes, which amount to above the fourth part, and one man is Patron of both Churches, no Judicavit doth lye, for that both Incumbents claim by one and the ſame Patron. Et ſic de ſimilibus. See the Section next following.

And where Littleton ſaith ſeiſed of lands in fee, the ſame law it is if a man be ſeiſed of lands in tail, and hath iſſue two ſons Mutatis mutandis.

¶ *Et eſt ſeiſie &c.* That is to ſay, actually ſeiſed, either by entry, as Littleton here putteth it, or by poſſeſſion of the leſſee for years, or the like. (o) 2.E.2.baſtardy 19.

¶ *Navoit aſcun title, &c.* That is to ſay, any pretence or ſemblance of title, as the younger brother here hath, and in many other caſes, there is a great diverſity holden in our books (o) where one hath a colour or pretence of right, and when he hath none at all, whereof you may read plentifully in our books. 21.E.3.34.22.Aſſ. 85. 39.E.3.26.17.E.3.59. 11.E. .Aſſ.88. 21.H.6.14.11.E. .age.3 Vid. Sect.400. & cap. Gorran.

Sect. 398.

¶ Mesme le maner eſt, ſi home ſeiſie de certaine ter en fee ad iſſue deux files & decie, leigne file entra en la terre claymant tout la terre a luy, & ent ſolement prift les profits, & ad iſſue & mort ſeiſie, per que ſon iſſue enter, quel iſſue ad iſſue & decie ſeiſie, et l' ſecond iſſue enter, *& ſic ultra*, uncore le puiſne file ou ſon iſſue, quant a le moitie poit enter ſur quecunque iſſue de leigne file, nient obſtant tiel

IN the ſame manner it is, if a man ſeiſed of certain land in fee, hath iſſue two daughters and dieth, the eldeſt daughter entreth into the land claiming all to her, and thereof only taketh the profits, and hath iſſue and dieth ſeiſed, by which her iſſue enter, which iſſue hath iſſue and dieth ſeiſed, and the ſecond iſſue enter, *& ſic ultra*, yet the younger daughter or her iſſue as to the moity may enter upon any iſſue whatſoever of the elder

diſcent

diſcent, pur ceo que ils claimont per un meſme title, &c. mes en tiel caſe ſi ambideux Soers avoyent enter apres la mort lour Pier, et ent fueront ſeiſies, & puis leigne Soer uſt diſſeiſe la puiſne Soer de ceo que a luy aſſert, & ent fuit ſeiſie en fee & ad iſſue, & de tiel eſtate morust ſeiſie, per que les Tenements diſcendont al Iſſue del eigne Soer, donque le puiſne Soer, ne ſes heires ne poient enter, &c. Cauſa qua ſupra, &c.

daughter notwithſtanding ſuch diſcent, for that they claim by one ſame title, &c. but in ſuch caſe where both ſiſters have entred after the death of their Father, and were thereof ſeiſed, and after the eldeſt ſiſter had diſſeiſed the younger of her part, and was thereof ſeiſed in Fee, and hath Iſſue, and of ſuch Eſtate dieth ſeiſed, whereby the lands diſcend to the Iſſue of the elder ſiſter, then the younger ſiſter nor her heirs cannot enter, &c. *Cauſa qua ſupra, &c.*

21. Aſſ. 19. 21. E. 3. 7. 27. 32. 26. Aſſ. 2. 27. Aſſ. 68. 36. Aſſ. p. 1. 43. E. 3. 19. 4. H. 7. 10, 16. H. 7. 4.

¶ *Claimont tout la terre.* Here it appeareth, That when the one Coparcener doth ſpecially enter, claiming the whole land, and taking the whole profits, that the gains the one moity, viz. of her ſiſter by abatement, and yet her dying ſeiſed ſhall not take away the entry of her ſiſter, whereas when one Coparcener enters generally, and taketh the profits, this ſhall be accounted in law the entry of them both, and no diveſting of the moity of her ſiſter.

See more of this in the chapter of Warranty. Sect. 710 28 Aſſ. 30. Vide Sect. 710.

If one Coparcener enter claiming the whole, and make a Feoffment in Fee and take back an eſtate to her and her heirs, and hath Iſſue and die ſeiſed, this Diſcent ſhall take away the entry of the other ſiſter, becauſe by the Feoffment the privity of the Coparcenary was deſtroyed.

¶ *Claimont per un meſme title, &c.* Of this ſufficient hath been ſaid in the next precedent Section.

¶ *Ne poient enter, &c.* Of this there hath been alſo ſpoken in the ſame Section.

Sect. 399.

Pl. Com. 57. 39. E. 3. Le Darreine caſe.

¶ *Seiſie en fee.* For this holds not in caſe of an eſtate tail.

Lib. 8. fol. 101, 102. Sir Rich. Lechfords caſe.

¶ *Mulier, ſeu filius mulieratus.* *Mulier* hath three ſignifications; firſt, Sub nomine mulieris continetur quælibet Fœmina. Secondly, Propriè ſub nomine mulieris, continetur Virgo. Thirdly, Appellatione mulieris in legibus Angliæ, continetur Uxor. Et ſic filius natus vel filia nata ex juſta uxore, appellatur in Legibus Angliæ filius mulieratus, ſeu filia mulierata, a ſon mulier, or a daughter mulier, Sicut Baſtardus dicitur à Græco verbo Baſſaris, i. Meretrix, ſeu Concubina, quia procreatur ex meretrice ſeu

Glanvil. lib. 7. cap. 2. Bract. lib. 5. cap. 19. Brit. cap. 70.

Vide Sect. 188.

¶ Item ſi home eſt ſeiſie de certaine Terre en fee, & ad iſſue deux fits, & leigne fits eſt Baſtard, et l'puiſne fre eſt mulier, et le Pier devie, et le Baſtard enter enclaimant cõe heire a ſon pier, et occupia la terre tout ſa vie ſans alcun entre fait ſur luy per l'mulier, et le Baſtard ad iſſue et morust ſeiſie de tiel eſtate en fee,

Alſo if a man be ſeiſed of certain Lands in Fee, and hath Iſſue two Sons, and the elder is a Baſtard, and the younger *Mulier*, and the father die, and the Baſtard entreth claiming as heir to his Father, and occupieth the Land all his life, without any entry made upon him by the *Mulier*, and the Baſtard hath Iſſue and dieth ſeiſed

et

& la Terre diſcendiſt a ſon Iſſue, et ſon Iſſue enter, &c. En teſt caſe le mulier eſt ſans remedie, car il ne poit enter, ne aver aſcun action pur recoverer la Terre, pur ceo que eſt un antient Ley en tiel caſe uſe, &c.

of ſuch eſtate in Fee, and the land deſcend to his Iſſue, & his Iſſue entreth, &c. In this caſe the *Mulier* is without remedy, for he may not enter, nor have any Action to recover the land, becauſe there is an antient law in this caſe uſed, &c.

concubina. In Engliſh, he is called baſe born, and thereupon ſome ſay, That a Baſtard is as much to ſay, as one that is a baſe Natural, for Aerd ſignifieth Nature. I read in Fleta (p) That there be three kinds of Baſtards, viz. Manſer, Nothus, & Spurius, which are deſcribed in two old verſes;

(p) Flet. lib. 1. cap. 5. Vide Sect. 380.

Manſeribus ſcortum, Nothò mœchus dedit ortum.
Ut ſeges è ſpica, ſic Spurius eſt ab amica.

But we term them all by the name of Baſtards, that be born out of lawful marriage. By the Common Law, (r) if the husband be within the four Seas, that is, within the Juriſdiction of the King of England, if the wife hath Iſſue, no proof is to be admitted to prove the Child a Baſtard, (for in that caſe, Filiatio non poteſt probari) unleſs the husband hath an apparent impoſſibility of procreation, as if the husband be but eight years old, or under the age of procreation, ſuch Iſſue is Baſtard, albeit he be born within marriage. (ſ) But if the Iſſue be born within a month or a day after marriage, between parties of full lawful age, (t) the child is legitimate.

(r) Bract. lib. 4. fol. 278, 279. 7. H. 4. 9. 43. E. 3. 19. 41. E. 3. 7. 44. E. 3. 10. 29. Aſſ. 54. 98. Aſſ. 14. 1. H. 6. 7. 19. H. 6. 17. (ſ) 39 E. 3. 13. (t) 18. E. 4. 28.

¶ *Diſcendiſt a ſon iſſue.* For if the Baſtard dieth ſeiſed without iſſue, and the Lord by Eſcheat entreth, this dying ſeiſed ſhall not bar the Mulier, becauſe there is no Diſcent. If the Baſtard enter, and the Mulier dieth, his Wife privement enſeint with a Son, the Baſtard hath Iſſue and dieth ſeiſed, the Son is born, his right is bound for ever. But if the Baſtard dieth ſeiſed, his Wife enſeint with a Son, the Mulier enter, the Son is born, the Iſſue of the Baſtard is barred: for Littleton putteth his caſe, that there muſt not only be a dying ſeiſed, but alſo a diſcent to his iſſue.

¶ *Et ſon iſſue enter, &c.* And ſo it is to be underſtood, albeit the Mulier after the decaſe of the Baſtard, doth enter before the heir of the Baſtard, for the diſcent bindeth, and not the entry of the heir.

¶ *Le mulier eſt ſans remedie.* Hereby it appeareth, that this Diſcent differeth from other diſcents, for this diſcent barreth the right of the Mulier, whereas other diſcents do take away the entry only of him that right hath, and leaveth him to his Action, but here by the dying ſeiſed of the Baſtard, his Iſſue is become lawful heir. (a) It is holden, that if the Mulier be within age at the time of the dying ſeiſed, that nevertheleſs he ſhall be barred, becauſe the Iſſue of the Baſtard is in judgment of law become lawful heir, and the law doth prefer legitimation, before the privilege of infancy.

Lib 8 101, 102. Sir Rich. Lechfords caſe. (a) 5. E. 2. Diſcent Br. 49 31. Aſſ. 18. 22. 33. E 3. Verdict. 48 36. Aſſ. 2. Pl. Com Stowels caſe. 10. E 3. 2.

And the reaſon of this caſe is, for that Juſtum non eſt aliquem poſt mortem facere baſtardum, qui toto tempore vitæ ſuæ pro legitimo habebatur. And ſo it ſeemeth to be, That if a man hath Iſſue a Son being Baſtard eigne, and a daughter, and the daughter is married, the Father dieth, the Son entreth and dieth ſeiſed, this ſhall bar the Feme Covert. And the diſcent in this caſe of Services, Rents, Reverſions, expectant upon eſtates tail, or for life, whereupon rents are reſerved &c. ſhall bind the right of the Mulier, but a diſcent of theſe ſhall not bide them that right have to an action.

13. E. 2. tit. Baſtardy 28. 14. E. 2. Baſtardy 26.

So if the Baſtard dieth ſeiſed, and his Iſſue endoweth the wife of the Baſtard, yet is not the entry of the Mulier lawful upon the tenant in Dower, for his right was barred by the diſcent.

Sir Rich. Lechfords caſe ubi ſupra.

If the Baſtard eigne entreth into the land and hath iſſue, and entreth into Religion, this diſcent ſhall bar the right of the Mulier.

20. H. 3. Baſtardy 29.

¶ *Ad iſſue deux fits.* If a man hath Iſſue ſuch a Baſtard as is aforeſaid, and dieth, and the Baſtard entreth & dieth ſeiſed, and the land diſcendeth to his Iſſue, the Collateral heir of the Father is bound, as well as where there be two Sons.

Hil. 18. E 3. cor. Reg. Rot. 144. Ebor. 17. E. 3. 59. F tit. Baſtard 32. Sir Rich Lechfords caſe, ubi ſupra.

And where our Author ſpeaketh of Sons, ſo it is if a man hath iſſue two Daughters, the eldeſt being a Baſtard, and they enter and occupy peaceably as heirs, now the Law in favour of legitimation, ſhall not adjudge the whole poſſeſſion in the Mulier, (who then had the only right) but in both, ſo as if the Baſtard hath Iſſue and dieth, her Iſſue ſhall inherit.

See afterwards in the chapter of Warranties.

(b) And

(b) And in the ſame caſe, if both daughters enter and make partition, this partition ſhall bind the Mulier for ever.

(c) And an Aſſiſe of Mortdanceſter lieth not between the Baſtard and the Mulier in reſpect of the proximity of blood.

And the Baſtard being impleaded or vouched ſhall have his age.

¶ *Et le Baſtard enter come heire a ſon pier.* If a man hath Iſſue Baſtard eigne and Mulier puiſne, and the Baſtard in the life of the Father hath Iſſue and dieth, and then the Father dieth ſeiſed, and the Son of the Baſtard entreth, as heir to his Grandfather, and dieth ſeiſed, this diſcent ſhall bind the Mulier.

¶ *Pur ceo que eſt antient Ley en tiel caſe uſe, &c.* As hereafter in our Commentary upon the two next Sections ſhall appear, by our ancient Books, and the ancient Statutes of the Realm. And here is implied how neceſſary it is after the example of our Author, to look into the Antiquities, than which, nothing is more venerable, profitable and pleaſant.

(b) 2. E. 3. tit Baſtardy 15.
21. E. 3. 34. b. 30. Aſſ. p. 7. Sir Rich Lechfords caſe, ubi ſup.
(c) Brit. cap. 73.
20. E. 3. Vouch. 129.
11. E. 3. Age 3. 5. H. 7. 2. Sir Rich. Lechfords caſe, ubi ſup.

Sect. 400.

¶ Mes il ad eſtre lopinion daſcuns, que ceo ſerra intendue lou l' pier ad un fits baſtard per un feme, et puis eſpouſa meſm la feme, et apres leſpouſels il ad iſſue per meſme la feme un fits, ou un file mulier, & puis le pier mozuſt, &c. ſi tiel Baſtard enter, &c. et ad iſſue et debie ſeiſie, &c. donque avera liſſue de tiel Baſtard le Terre cleerment a luy, come avant eſt dit, &c. et nemy aſcun auter baſtard la mere, que ne fuit unque eſpouſe a ſon pier, et ceo ſemble bone et reaſonable opinion. Car tiel Baſtard nee devant eſpouſels celebrez perenter ſon pier et ſa mere, per la Ley de Saint Egliſe eſt mulier, coment que per la Ley del Terre il eſt Baſtard, et iſſint il ad un colour dentrer come heire a ſon pier, pur ceo que il eſt per un Ley mulier, &c. ſ. p la Ley de Saint Egliſe. Mes auterm eſt de baſtard que nad aſcun maner colour dentre come heire, entant que il ne poit per nul Ley eſtre dit mulier, car tiel Baſtard eſt dit en la Ley, Quaſi nullius filius, &c.

But it hath been the opinion of ſome, That this ſhall be intended where the Father hath a Son Baſtard by a woman, and after marrieth the ſame woman, and after the eſpouſals he hath iſſue by the ſame woman a ſon or a daughter, and after the Father dieth, &c. if ſuch baſtard entreth, &c. & hath iſſue and die ſeiſed, &c. then ſhall the iſſue of ſuch baſtard have the land cleerly to him, as it is ſaid before, &c. and not any other Baſtard of the Mother which was never married to his Father, & this ſeemeth to be a good and reaſonable opinion: for ſuch a Baſtard born before marriage celebrated between his Father and his Mother, by the Law of Holy Church is *Mulier*, albeit by the Law of the Land he is a Baſtard, and ſo he hath a colour to enter as Heir to his Father, for that he is by one law *Mulier*, s. by Law of Holy Church. But otherwiſe it is of a Baſtard which hath no manner of colour to enter as Heir, inſomuch as he can by no Law be ſaid to be *Mulier*, for ſuch a Baſtard is ſaid in the Law to be *Quaſi nullius filius, &c.*

Mes

MEs ad eſte lopinion daſcuns, &c. And our Author here ſaith, that this opinion is good and reaſonable, for that ſuch a Baſtard, by the Law of Holy Church (a) is a Mulier.

Matrimonium ſubſequens legitimos facit quoad ſacerdotium non quoad ſucceſſionem, propter conſuetudinem regni quod ſe habet in contrarium. Yet the Canon Law holdeth them legitimate quoad ſucceſſionem. At a Parliament holden (q) Anno 20. H. 3. for that to certifie upon the King's writ, that the ſon born before marriage is a Baſtard, was Contra Communem formam Eccleſiæ, rogaverunt omnes Epiſcopi Magnates ut conſentirent, quod nati ante matrimonium eſſent legitimi, ſicut illi qui nati ſunt poſt matrimonium quantum ad ſucceſſionem hæreditariam, quia Eccleſia tales habet pro legitimis: Et omnes Comites & Barones una voce reſponderunt, Quod nolunt Leges Angliæ mutare, quæ huc uſque uſitatæ ſunt & approbatæ.

(a) Vid. Britton. f. 128 b. 156. 203 And the Statute of Merton 20 H 3. cap. 9. confirmeth this opinion Hil. 18 E. 3. coram Rege in Theſaur. Thorum. Bracton. lib. 2. fol. 63.

(q) Statut. de Merton. 20. H. 3. cap. 9. Vid. Bract. l. 5 f. 416, 417. 10. Aſſ. Pl. 20.

¶ *Iſſint que il ad un colour dentre, &c.* Here it is to be obſerved, That the Law more reſpecteth him that hath a Colourable title, though it be not perfect in Law, than him that hath no title at all, as hath been ſaid (r) before.

(r) Vide Sect. 397. & cap. garr. Sect.

Sect. 401.

¶ MEs en le caſe avantdit, lou le Baſtard enter apres la mort le pier, et l'mulier luy ouſta, et puis le Baſtard diſſeiſit le mulier, et ad iſſue, et debie ſeiſie, et iſſue enter, dõq̃ le mulier poit aver biele Dentre ſur diſſ. enders iſſue del Baſtard et recovera la terre, &c. Et iſſint poies veir le diverſitie lou tiel Baſtard continue la poſſ. tout ſa vie ſans interruption e lou le mulier enter e interrupt le poſſeſſion de tiel Baſtard, &c.

BUt in the caſe aforeſaid, where the Baſtard enter after the death of the Father, and the mulier ouſt him, and after the Baſtard diſſeiſe the mulier, and hath iſſue and dieth ſeiſed, and the iſſue enter, then the mulier may have a Writ of *Entrie ſur diſſeiſin* againſt the iſſue of the Baſtard, & ſhall recover the Land, &c. And ſo you may ſee a diverſity where ſuch Baſtard continues the poſſeſſion all his life without interruption, and where the mulier entreth and interrupts the poſſeſſion of ſuch Baſtard, &c.

¶ ET le, *mulier luy ouſta.* An eſtranger in the name of the Mulier without his commandment cannot enter upon the Baſtard, for that the Baſtard may gain the eſtate and bar the Mulier. And therefore regularly none ſhall enter but the Mulier, or ſome other by his commandment. And therefore Littleton ſaith (and the Mulier put him out) no more than in the caſe (a) of the Lord Awdley: for there an eſtranger of his own head could not enter in the name of him that right had to enter within the five years to avoid the Fine. But in both thoſe caſes, firſt, if the Mulier agree thereunto before the diſcent of the Baſtard; or ſecondly, if he that right hath before the five years be paſt do aſſent thereunto, the claim is good, and ſhall avoid the eſtate both of the Baſtard, & of the Conuſee, as it was holden in the Lord Awdleys Caſe, Quia omnis ratihabitio retrotrahitur, & mandato æquiparatur, and it ſtandeth well with the words of the Statute, ſo that they purſue their title, &c. by way of Action or Entry, and ſo is the Book in (b) 31. H. 8. to be intended.

(a) Mich. 38. & 39 Eliz. in the Kings bench upon evidence by the whole Court. Vid. 31. H. 8 entr. conge. Br. 125.

4. H. 7. cap.

Vide Sect 334.

(b), 1. H. 8. entr. cong. Br. 123.

But in the caſe of the Baſtard eigne, which is Littletons caſe, Gardein in Hocage, or Gardein in Chivalrie may enter, for they are no ſtrangers, as in another place is plainly ſhewed. If an Infant make a feoffment in fee, an eſtranger of his own head cannot enter (c) to the uſe of the Infant, for the eſtate is voidable. But where an Infant or a man of full age is diſſeiſed, an entry by a ſtranger of his own head is good and veſteth preſently the eſtate in the Infant, or other diſſeiſee. So it is if Tenant for life make a feoffment in fee, an eſtranger may enter for a forfeiture in the name of him in the Reverſion, and thereby the eſtate ſhall be veſted in him, Et ſic de ſimilibus.

(c) Paſc. 39. Eliz. in Communi Banco per Curiam. 10. H. 7. 16. 7. E. 369. 26. E. 3. 62. per thorp. 45. E. 3. releaſe 28 11. Aſſ. 11.

¶ *Lou tiel Bastard continue tiel possession sans interruption.* If the Mulier entreth upon the Bastard, and the Bastard recovereth the Land in an Assise against the Mulier, now is the Interruption avoided, and if the Bastard dieth seised, this shall bar the Mulier.

2. Ass. 9. If the Bastard eigne after the decease of the father entreth, & the King seiseth the land for some contempt supposed to be committed by the Bastard, for which no Freehold or Inheritance is lost, but only the profits of the land by way of seisure, and the Bastard die, and his Issue is upon his Petition restored to the possession, for that the seisure was without cause, the Mulier is barred for ever, for the possession of the King when he hath no cause of seisure shall be adjudged the possession of him for whose cause he seised. But if after the death of the Father the mulier be found heir and within age, & the King seiseth, in that case the possession of the King is in right of the mulier, and vesteth the actual possession in the mulier, and consequently the Bastard eigne is fore-closed of any right for ever.

And so it is, when the King seiseth for a contempt, or other offence of the Father or of any other Ancestor, in that case, if the issue of the Bastard eigne upon a Petition be restored, for that the seisure was without cause, the mulier is not barred, for the Bastard could never enter, and consequently could gain no estate in the land, but the possession of the King in that case shall be adjudged in the right of the mulier. And it is to be observed, that the Bastard must enter in vacuam possessionem, and continue during his life, without interruption made by the mulier.

Pl. Com. Parson de Honylanes case 91. 35. H. 6. 24. 21. H. 6. 9. 1. E. 4. 3. 21. E. 4. 5. 5. E. 4. 60.

¶ *Interrupt le possession del Bastard, &c.* If the Bastard invite the mulier to his house, & to see Pictures, &c. or to dine with him, or to Hawk, Hunt, or sport with him, & such like upon the land descended, and the mulier cometh upon the land accordingly, this is no interruption, because he came in by the consent of the Bastard, & therefore the coming upon the land can be no trespass, but if the mulier cometh upon the ground of his own head, and cutteth down a tree, or diggeth the soil, or take any profit, these shall be interruptions, for rather than the Bastard shall punish him in an action of Trespass, the act shall amount in law to an Entry, because he hath a right of Entry. So it is, if the mulier put any of his beasts into the ground, or command a stranger to put in his beasts, these do amount to an Entry, for albeit in these cases the mulier doth not use any express words of Entry, yet these, and such like acts, do without any words amount in law to an Entry, for acts without words may make an Entry, but words without an act (viz. Entry into the land, &c.) cannot make an Entry, (all which interruptions are implied in the said, &c.) More shall be said hereafter of Interruptions, in the Chapter of Continual Claim.

Sect. 402.

Brooke tit. discent. 40. ¶ *SI un enfant deins age ad cause dentrer.* If a man seised of lands in fee die, his wife privement enseint with a son, and a stranger abate and die seised, and after the son is born, he shall be bound by the Discent, because he at the time of the discent had no right to enter, and this is to be gathered upon these words of Littleton, ad cause dentrer, which at the time of the Discent he had not.

20. H. 6. 28. b, 2. E. 4. 25, 26. 15. E. 4. discent. 30. ¶ *Est eins per Discent, &c.* Here is implied any other heir collateral or lineal.

(d) Vide Sect. 259. 403. An Infant is accounted in Law (as hath been often said.) (d) until he passeth the

ITem, ſi un enfant deins age ad tiel cause de entry en aſcuns terres ou tenements ſur un auter, que eſt ſeiſie en fee, ou en fee taile de meſme les terres ou tenements, ſi tiel home que eſt tielment ſeiſie, morust de tiel eſtate ſeiſie, et les terres diſcendont a ſon iſſue, durant le temps que lenfant eſt deins age, tiel diſcent, ne tollera

ALſo if an Infant within age hath ſuch cauſe to enter into any Lands or Tenements upon another, which is ſeiſed in fee, or in fee tail of the ſame Lands or Tenements, if ſuch man who is ſo ſeiſed, dieth of ſuch eſtate ſeiſed, and the Lands deſcend to his Iſſue, during the time that the Infant is within age, ſuch Diſcent ſhall not take away the entry of the

lentry

lentry lenfant mes q̄ il poit enter ſur le iſſue que eſt eins per diſcent, &c. pur ceo que nul laches ſerra adjudge en un enfant deins age en tiel caſe.

Infant, but that he may enter upon the iſſue which is in by diſcent, for that no laches ſhall be adjudged in an Infant within age in ſuch a caſe.

age of 21 years, and certain priviledges he hath in reſpect of his infancy.

¶ *Nul Laches ſerra adjudge en le Infant deins age en tiel caſe.*

And Littleton well added (en tiel caſe) that is, in caſe of Diſcent, for in ſome other Caſes, Laches ſhall prejudice 33.E.3.quar.imp.41.

an Infant. As Laches ſhall be adjudged in an Infant, if he preſent not to a Church with.n ſix months, for the Law reſpecteth more the priviledge of the Church, (that the Cure be ſerv= ed) than the priviledge of Infancy. And ſo the publick repoſe of the realm, concerning mens Freeholds and Inheritances ſhall be preferred before the priviledge of Infancy, in caſe of a ſine where the time begins in the time of the Anceſtor. So non=claim of a Villain, of an Infant by a year and a day, who hath fled into ancient Demeſne, ſhall take away the ſeiſure of the Infant. And if an Infant bring not an appeal of the death of his Anceſtor within a year and a day he is barred of his appeal for ever, for the Law reſpects more liberty and life, than the priviledge of Infancy. And here it is to be obſerved, that Littleton putteth his caſe, that an Infant ſhall enter upon a Diſcent, when a ſtranger dieth ſeiſed, but he put it not to before, in the caſe of the Baſtard eigne. B. Tenant in tail infeoffeth A in fee, A. hath iſſue within age and dieth, B. abateth and dieth ſeiſed, the iſſue of A. being ſtill within age, this Diſcent ſhall bind (c) the Infant, for the iſſue in tail is remitted: and the Law doth more reſpect an ancient right in this caſe, than the priviledge of an Infant that had but a defeaſible eſtate. And it is ſaid (d) if the King die ſeiſed of lands, and the land deſcend to his Succeſſor, that this ſhall bind an Infant, for that the priviledge of an Infant in this caſe holds not againſt the King. Pl.Com.372. (c) 11.E.4.1.2. F.N.B.35.m. (d) 35.H.6.60.

Sect. 403.

¶ Item, ſi le baron & la feme come en droit la feme, ont title & droit denter en tenements que un auter ad en fee, ou en fee taile, et tiel tenant morust ſeiſie, &c. en tiel caſe lentrie le baron eſt tolle ſur lheire que eſt eins per diſcent. Des ſi le baron decie, donque la feme bien poit enter ſur liſſue que eſt eins per diſcent, pur ceo que Laches le baron ne turnera la feme ne les heires en prejudice ne en dammage

Alſo if Husband and Wife, as in right of the wife have title and right to enter into Lands which another hath in fee, or in fee tail, and ſuch tenant dieth ſeiſed, &c. In ſuch caſe the entry of the Husband is taken away upon the heir which is in by Diſcent: but if the Husband die, then the Wife may well enter upon the Iſſue which is in by Diſcent, for that no Laches of the Husband ſhall turn the wife or her heirs to any prejudice, nor loſs

¶ *Si baron & feme come en droit ſa feme ont title & droit denter, &c. & tiel tenant morust ſeiſie, &c.*

Theſe words are general, but are particularly to be underſtood, viz. when the wrong was done to the wife during the Coverture, for if a Feme ſole be ſeiſed of lands in fee, and is diſſeiſed, and then taketh husband; In this caſe the husband and wife, as in the right of the wife, have right to enter, and yet the dying ſeiſed of the diſſeiſor in that caſe ſhall take away the entry of the wife after the death of her husband, and the reaſon is alwel for that ſhe her ſelf when ſhe was ſole, might have entred and reco=ntinued the poſſeſſion, as alſo it ſhall be accounted her folly that ſhe would take ſuch a husband which would not enter before the Diſcent. 7.H.7.24.2. 2.E.4.23. 7.E.47.b. 20.H.6.28.b. 42.E.3.12. 15.E.4.Diſcent.30.

9. H. 7. 24.

But there if the woman were within age at the time of her taking of huſband, then the dying ſeiſed ſhal not after the deceaſe of her huſband take away her entry; becauſe no folly can be accounted in her, for that ſhe was within age when ſhe took huſband, & after Coverture ſhe cannot enter without her huſband, all which is implied in the ſaid (&c.)

en tiel cas, mes que la feme & ſes heirs bñ poient enter, lou tiel diſcent eſt eſchue durant le coverture.

in ſuch caſe, but that the wife and her heirs may well enter where ſuch Diſcent is eſchued during the Coverture.

Vid. Sect. 402.

¶ *Laches le Baron ne turnera la fem, &c. al prejudice, &c.* Laches ſignifieth in the Common Law, retchleſneſs, or negligence. Et negligentia ſemper habet infortunium comitem. Here is a diverſity to be obſerved, that albeit regularly no Laches ſhall be accounted in Infants, or Feme Coverts as is aforeſaid, for not Entry or Claim to avoid Diſcents, yet Laches ſhall be accounted in them for no performance of a Condition, annexed to the ſtate of the land. For if a Feme be infeoffed either before or after marriage, reſerving a Rent, and for default of payment a re-entry. In that caſe, the Laches of the Baron ſhall diſherit the wife for ever. And ſo it is, (n) of an infant; his Laches, for not performing of a condition annexed to a ſtate, either made to his Anceſtor or to himſelf, ſhall bar him of the right of the land for ever.

20. H. 6. 28. b.
(n) 31. Aſſ. p. 17.
42. E. 3. 1. Pl. Com. 55.
10. H. 7. 13. H. 7.
35. H. 6. 41. Pl. Com.
2, 6. b. Fleta, l. 2. cap. 50.

If a man make a feoffment in fee to another reſerving a rent, and if he pay not the rent within a month, that he ſhall double the rent, and the Feoffee dieth, his heir within age, the Infant payeth not the rent, he ſhall not by this Laches forfeit any thing. But otherwiſe it is of a Feme Covert, and the reaſon and cauſe of this diverſity is, for that the Infant is provided for by the Statute. (o) Non current uſuræ contra aliquem infra ætatem exiſten' &c. But that Statute doth not extend to a Feme Covert, neither doth that Statute extend to a condition of a re-entry; which an Infant ought to perform, for the forfeiture thereof cannot be called Uſura.

(o) Leſtatute de Merton cap. 5.

Sect. 404.

¶ *Mes la Court tient, lou tiel title eſt done al feme ſole, que puis prent baron, que nentra pas, eins ſuffer un Diſcent, &c. la auter eſt, car ſerra dit la folly le feme de prender tiel baron que nentre en temps, &c.*

But the Court holdeth where ſuch title is given to a fem ſole who after taketh huſband which doth not enter, but ſuffer a Diſcent, &c. there otherwiſe it is, for it ſhall be ſaid the folly of the wife to take ſuch a huſband which entered not in time, &c.

9. H. 7. 24.

¶ This is added, and therefore as formerly I have done, I meddle not withall, whether the opinion is holden for law, as it appeareth in the Section next precedent.

Sect. 405.

¶ Here Littl. explaineth a man of no ſound memory to be Non compos mentis. Many times (as here it appeareth) the Latine word explaineth the true ſenſe, and calleth him not Amens, demens, furioſus, lunaticus, fatuus, ſtultus, or the like, for Non compos mentis is moſt ſure and legal.

Pl. Com. fo. 368. b. per Sanders lib. 4. fo. 127. 182. Beverleys caſe. Mirror c. 1. ſect. 9. c. 5. Sect. 1. Bracton f. 165. & 420. Britton f. 167. b. 217. 66. Fleta l. 6. c. 39. Fitz. N. B. 222. b. Stanf. Prer. 33, 34.

Non compos mentis is

¶ Item, ũ home que eſt de non ſane memorie, que eſt adire en Latin, Qui non eſt compos mẽtis, ad cauſe dentre en aſcuns tiels tenements, ũ tiel diſcent ut ſupra, ſoit ewe en ſa vie, durant le temps que il fuit de

Alſo if a man which is of non ſane memory, that is to ſay in Latin, *Qui non eſt compos mentis*, hath cauſe to enter into any ſuch tenements, if ſuch diſcent, *ut ſupra*, be had in his life during the time that he was not of

non

non ſane memorie, & puis devia, ſon heire bien poit enter ſur luy que eſt eins p diſcent. Et en teſt caſe poyes deier un cas, q̃ lheire poiet enter, & uncore ſon anceſter que avoit meſm̃ le title ne puiſſoit enter. Car celuy que fuit hors de ſa memorie al temps de tiel diſcent, ſi voile enter apres tiel diſcent, ſi action ſur ceo ſoit ſue enders luy, il nad riẽs pur luy a pleder, ou de luy ayder, mes adire que il fuit de non ſane memorie al temps de tiel diſcent, &c. & a ceo ne ſerra il reſceive adire, pur ceo que nul home d̃ pleine age ſerra reſceive en aſcun plee per la ley a diſabler le perſon demeſm̃, mes lheire bien poit diſabler le perſon ſon auncetter pur ſon advantage demeſne en tiel cas, pur ceo q̃ nul laches poit eſtre adjudge per la ley en celuy que ad nul diſcretion en tiel caſe.

ſound memory, and after dieth, his heir may well enter upon him which is in by Diſcent. And in this caſe you may ſee a caſe where the heir may enter, and yet his Anceſtor which had the ſame title could not enter. For he which was out of his memory at the time of ſuch diſcent if he will enter after ſuch a diſcent, if an action upon this be ſued againſt him, he hath nothing to plead for himſelf or to help him, but to ſay, that he was not of ſane memory at the time of ſuch diſcent, &c. And he ſhall not be received to ſay this, for that no man of full age ſhall be received in any plea by the Law to diſable his own perſon, but the Heir may well diſable the perſon of his Anceſtor for his own advantage in ſuch caſe, for that no Laches may be adjudged by the Law in him which hath no diſcretion in ſuch caſe.

of four ſorts; 1. Ideot, which from his nativity, by a perpetual infirmity, is Non compos mentis. 2. He that by ſickneſs, grief, or other accident, wholly loſeth his memorie and underſtanding. 3. A Lunatique that hath ſometime his underſtanding, and ſometime not, Aliquando gaudet lucidis intervallis, and therefore he is called Non compos mentis, ſo long as he hath not underſtanding. Laſtly, he that by his own vitious act for a time deprived himſelf of his memory and underſtanding, as he that is drunken. But that kind of Non compos mentis ſhall give no privilege or benefit to him or to his Heirs. And a Diſcent ſhall not take away the entry of an Ideot, albeit the want of underſtanding was perpetual; for Littleton ſpeaketh generally of a man of non ſane memory. So likewiſe if a man that becomes Non compos mentis by accident, as is aforeſaid, be diſſeiſed and ſuffer a Diſcent, albeit he recover his memory and underſtanding again, yet he ſhall never avoid the Diſcent; and ſo it is a fortiori of one that hath Lucida intervalla. As for a Drunkard, who is Voluntarius Dæmon, he hath (as hath been ſaid) no privilege thereby, but what hurt or ill ſoever he doth, his drunkenneſs doth aggravate it; Omne crimen ebrietas & incendit, & detegit.

L.b.4.124,125. Beverleys caſe.

If an Ideot make a feoffment in fee, he ſhall in pleading never avoid it, by ſaying that he was in Ideot at the time of his feoffment, and ſo had been from his nativity. But upon an office found for the King, the King ſhall avoid the feoffment, for the benefit of the Ideot, whoſe cuſtody the law giveth to the King. 39 H.6.42.b. Abb. Aſſ. 89. b. F.N.B. 202 5.E.3 70. Britton, cap. 28. fol. 65. 25. Aſſ. pl. 4 35 Aſſ. pl. 10

Doit is of a Non compos mentis by accident, and of him Qui gaudet lucidis intervallis. If an eſtate be made during his Lunacy: for albeit the parties themſelves cannot be received to diſable themſelves, yet twelve men upon their oaths may find the truth of the matter. But if any of them alien by fine or recovery, this ſhall not only bind himſelf, but his heirs alſo. As amongſt other things requiſite to be known, theſe Caſes you ſhall find at large in my Commentaries, whereunto for brevity I refer the Reader; Upon all which Books, there have been four ſeveral opinions, concerning the alienation, or other act of a man 32.E.3.tit.Scire fac. 160. Stanf. Pr. 34. F.N.B. 202. a. Beverleys caſe, lib. 4. 126, 127, 128.

Vid. Br. tit. Dum fuit infra ætatem. 5.

man that is Non compos mentis, &c. For firſt ſome are of opinion, that he may avoid his own act, by entry, or plea. Secondly, others are of opinion, that he may avoid it by writ, and not by plea. Thirdly, others, that he may avoid it either by plea, or by writ; and of this opinion is Fitzherbert in his Natura Brevium, ubi ſupra. And Littleton here is of opinion, that neither by plea, nor by writ, nor otherwiſe, he himſelf ſhall avoid it, but his heir (in reſpect his Anceſtor was Non compos mentis) ſhall avoid it by entry, plea, or writ. And herewith the greateſt authorities of our Books agree; and ſo was it reſolved with Littleton, in Beverleys caſe; (r) where it is ſaid, That it is a Maxim of the Common Law, that the party ſhall not diſable himſelf. But this holdeth only in Civil Cauſes, for in Criminal Cauſes, as Felony, &c. the act and wrong of a mad man ſhall not be imputed to him, for that in thoſe cauſes, Actus non facit reum, niſi mens ſit rea, and he is Amens (id eſt) ſine mente, without his mind or diſcretion; and Furioſus ſolo furore punitur, a mad man is only puniſhed by his madneſs. And ſo it is of an Infant, until he be of the age of fourteen, which in law is counted the age of diſcretion.

(r) Lib. 4. fol. 126, 127.

26. Aſſ. 27. 21. H 7. 31. Stanford 16. b. 8. E. 2. Coron 412. 414. 351. 22. E. 3. ibid. 224. Beverleys caſe ubi ſup. F. N. B. 202. D. 3. H. 7. 12. Vide 3. E. 3. tit. Entrie Cong. Statham. 12. E. 4. 8. 39. H. 6. 4. Abbr. Aſſ. 89. 39. H. 6. 43. 15. E. 4. tit. Diſcent, 30.

¶ *Et en ceſt caſe poyes veir un caſe, &c.* And though Littleton ſaith (One caſe) yet other caſes may be found to the ſame end. For if there be Grandfather, Father, and Son, and the Father diſſeiſe the Grandfather, and make a Feoffment in Fee, without warranty, the Grandfather dieth, albeit the right deſcend to the Father, he cannot by this right diſcended, enter againſt his own Feoffment, but if he die, the Son ſhall enter, and avoid the eſtate of the Feoffee.

So if the Grandfather be Tenant in Tail, and the Father diſſeiſe him ut ſupra, mutatis mutandis.

If Lands be given to two and to the heirs of one of them, he that hath the Fee ſimple ſhall not have an action of waſte upon the Statute of Glouceſter, againſt the Joyntenant for life, but his heir ſhall maintain an action of waſte againſt him, upon the Statute of Glouceſter, ſo the heir ſhall maintain that action, which the Anceſtor could not.

Sect. 406.

¶ Et ſi tiel home ď non ſane memorie fait Feoffment, &c. il meſm̃ ne poit enter ne aver briefe appell' Dum non fuit compos mentis, &c. cauſa qua ſupra: Mes apres la mort ſon hr̃e bien poit enter, ou aver le dit Briefe Dum non fuit compos mentis a ſon election. Meſme la Ley eſt lou enfant deins age fait Feoffment, et debie, ſon heire poit enter, ou aver un Briefe de Dum fuit infra ætatem, &c.

And if ſuch a man of Non ſane memory make a Feoffment, &c. he himſelf cannot enter, nor have a Writ called *Dum non fuit compos mentis, &c. cauſa qua ſupra:* but after his death his Heir may well enter, or have the ſaid Writ of *Dum non fuit compos mentis* at his choice. The ſame Law is where an Infant within age maketh a Feoffment and dieth, his Heir may enter or have a Writ of *Dum fuit infra ætatem, &c.*

¶ *Fait Feoffment, &c.* Or any other like conveyance in paiis, but Fines and other aſſurances of Record are not implied in this, (&c.)

¶ *Meſme la ley dun Enfant.* This is true as to the bringing of a Dum fuit infra ætatem, &c. but without queſtion the Infant in that caſe might have entred, as it appeareth in the next Section.

¶ *Briefe* Dum non fuit compos mentis. This writ (as it appeareth by our Author) lieth for the heir of him that was Non compos mentis, and not for himſelf, but a Dum fuit infra ætatem lieth as well for the Anceſtor himſelf after his full age, as for his heir.

Sect.

Sect. 407.

¶ Item, ſi jeo ſue diſſeiſie per un enfant deins age, le quel aliena a un auter en fee, & lalienee debie ſeiſie, & les Tents diſcendont a ſon heire, eſteant lenfant deins age, mon entry eſt tolle, &c.

ALſo if I be diſſeiſed by an Infant within age, who alieneth to another in fee, and the Alienee dieth ſeiſed, and the lands deſcend to his Heir being an Infant within age, my entry is taken away, &c.

Sect. 408.

¶ Mes ſi lenfant deins age ent ſur luy que eſt eins p diſcent, come il bien poit pur ceo q̄ meſme le diſcent fuit durant ſon nonage, donque jeo bien puiſſe enter ſur le diſſeiſor, pur ceo que p ſon entrie il ad defeat & anient le diſcent.

BUt if the Infant within age enter upon the Heir which is in by Diſcent, as he well may, for that the ſame Diſcent was during his Nonage, then I may well enter upon the Diſſeiſor, becauſe by his entry he hath defeated and taken away the Diſcent,

¶ HEre it appeareth, That the entry of the Infant is lawful, and giveth advantage to the Diſſeiſee to enter alſo, becauſe the Diſcent, which was the impediment, is avoided. And it is to be obſerved, That if the Diſcent be caſt, the Infant being within age, he may enter at any time, either within age, or after his full age. Vide the next Sect. following. 43.E.3.tit.Entr.Cong. Vet.N.B.126.b. F.N.B.192.

And ſo it is if an Infant make a Feoffment, &c. he may enter either within age, or at any time after his full age, and ſo in both caſes may his heir. 45.E.3.21.

Sect. 409.

¶ En meſme le manner eſt lou jeo ſue diſſeiſie, & le diſſeiſor fait feoffment en fee ſur condiſ, & le Feoffee mor de tiel eſtate ſeiſie, jeo ne purroy my enter ſur luy le feoffee: mes ſi le condition ſoit enfreint, iſsint q̄ pur cel cauſe le Feoffor enter ſur lheire, ne jeo nē puiſſe enter, pur ceo que quāt le Feoffor ou ſes heires entront pur le condition enfreint, le diſcent eſt oustermy defeat, &c.

IN the ſame manner it is where I am diſſeiſed, and the Diſſeiſor make a Feoffment in fee upon condition, and the Feoffee die of ſuch eſtate ſeiſed, I may not enter upon the Heir of the Feoffee: but if the Condition be broken, ſo as for this cauſe the Feoffor enter upon the Heir, now I may well enter, for that when the Feoffor or his Heirs enter for the condition broken, the Diſcent is utterly defeated, &c.

¶ The reaſon hereof is apparent, for Ceſſante cauſa, ceſſat cauſatum. Tenant in Capite maketh a Feoffment in fee to the uſe of the Feoffee and his Heirs, until the Feoffor pay an hundred pounds to him or his Heirs, the Feoffee dieth his heir within age, now hath the King the wardſhip of the body, and is intituled to the gard of the land. But if the Feoffor pay the hundred pounds according to the limitation, the Wardſhip is deveſted, both for the body and the land, & ſo it is in caſe of a condition: for as Littleton here ſaith, the diſcent which is the cauſe of Wardſhip, is utterly defeated. And by theſe two laſt caſes which Littleton hath here put, it appeareth, That there is no difference, where the Diſcent is diſaffirmed by a right Paramount, as where the ſtate was never law-

Vid. the Sect. next precedent. Dyer 13.El.fol.298, 299.

lawful, (as in the caſe of an Infant,) and where the diſcent is affirmed for a time, the eſtate being lawful, and being after defeated by matter ex poſt facto, by a title of re-entry.

Sect. 410.

¶ *Entre en Religion, &c.* Here is implied Profeſſion. This diſcent ſhall not bar the entry of the Diſſeiſee, for that the diſcent cometh by the Deed of the Father, becauſe he entred into Religion, wherein there is an excellent point worthy of obſervation: For albeit the entry into Religion make not the diſcent, but the profeſſion, whereof you have read before, Sect. 200. Yet here you may learn by Littleton, That the Law reſpects the original act, and that is, his entry into Religion, which is his own act, whereupon the profeſſion followed; whereby the diſcent hapned; for, Cujuſque rei potiſſima pars, principium eſt. And again, Origo rei inſpici debet, whereof you ſhall make great uſe in reading of our Books. (a) Here Lit. attributeth the cauſe of the diſcent to his entry into Religion, which was his own act, whereas a diſcent doth not take away an entry unleſs it cometh by death, which, as Littleton ſaith, is the act of God, and no glorious pretext of an act, (no though it be of Religion) ſhal work a wrong to a ſtranger, that hath right, to bar him of his entry: But it is ſaid, That in the caſe of the Baſtard eigne, and mulier puiſne, ſuch a diſcent ſhall bind the Mulier, as before hath been ſaid, and ſuch an heir that cometh in by ſuch a diſcent, ſhall have his age.

Vid. Sect. 200.

(a) V. Pl. Com. Dame Hales Caſe. 6. E. 3, 41, &c.

10. E. 3 55.

¶ *Car ſi jeo arraigne un Aſſiſe, &c.* Nota, if a man be Tenant or Defendant in a real or perſonal action, and hanging the ſuit, the tenant or defendant entreth into Religion, by this the writ is not abated, becauſe it is by his own act. And ſo it is of a Reſignation, but otherwiſe it is of a depoſition, or deprivation, becauſe he is expelled by judgment, and yet his offence, &c. was the cauſe thereof, ſed in præſumptione Legis, judicium redditur in invitum.

3. H. 6. 41. 10 H. 6. 10. b. 18 E. 4. 19. 9 E. 4. 25 52. 7. E. 4. 15. 18. E. 3. 24, 25. E. 3. 9 46 E. 3. 25. 10. E. 1. Briefe. 885. Bracton li 4. fo. 189 & lib. 5. fo. 414. 22. R. 2 Briefe 936. 15. Aſſ. pl. 8.

¶ Item, ſi jeo ſoy diſſeiſe, et le Diſſeiſor ad iſſue et enter en Religion, per force de quel les Tenemẽts diſcendont a ſon iſſue, en ceſt caſe jeo bien puiſſe enter sz iſſue, et uncore la fuit un diſcent. Mes pur ceo que tiel diſcẽt vient al iſſue per fait le pier, ſ̃, pur ceo que il enter en Religion, &c. et le diſcent ne vient a luy per fait de Dieu, ſ̃, per mort &c. mon entre eſt congeable. Car ſi jeo arraigne un Aſſiſe de Novel Diſſeiſin envers mon Diſſeiſor, coment que il puit enter en religion, ceo ne abaka my mon bẽ mes mon bẽ (ẽ non obſtant) eſtopera en ſa force, et mon recoverie vers luy ſerẽ boñ. Et per meſme le reaſon le diſcent que a veigne a ſon Iſſue per ſon fait demeſn, ne tollera moy d mon entrie, &c.

Alſo if I be diſſeiſed, and the diſſeiſor hath Iſſue and entreth into Religion, by force whereof the lands deſcend to his iſſue, in this caſe I may well enter upon the iſſue, and yet there was a diſcent: but for that ſuch diſcent cometh to the Iſſue by the act of the Father, s. for that he entred into Religion, &c. and the Diſcent came not unto him by the Act of God, (*ſcilicet*) by death, &c. my entry is congeable: for if I arraign an Aſſiſe of *Novel diſſeiſin* againſt my diſſeiſor, albeit he after enter into Religion, this ſhall not abate my Writ, but my writ (notwithſtanding this) ſhall ſtand in his force, and my recovery againſt him ſhall be good. And by the ſame reaſon the diſcent which cometh to his iſſue by his own act, ſhall not take from me my entry, &c.

¶ *Moy de mon entry, &c.* Here is implyed or any of my heirs.

Sect.

Sect. 411.

ITem, ſi jeo leſſe a un home certaine terres pur terme de 20 ans, & un auter moy diſſeiſt, & ouſta le termor et debie ſeiſie, et les tenements diſcendont a ſon heire jeo ne purroy enter, et uncore le leſſee pur terme dans bien puit enter pur ceo que il p̄ ſon entry ne ouſta l'heire q̄ eſt eins p̄ diſcēt d̄ le franktenemēt q̄ eſt a luy diſcēdus mes ſolement claime daver les tenemēts pur terme dans, le quel eſt pas expulſement de le franktenement del heire que eſt eins per diſcent. Mes autrement eſt ou mon tenant a terme de vie eſt diſſeiſie, Cauſa patet, &c.

ALſo if I let unto a man certain lands for the term of twenty years, and another diſſeiſeth me, and ouſt the termor; and die ſeiſed, and the Lands deſcend to his heir: I may not enter, and yet the Leſſee for years may well enter, becauſe that by his entry he doth not ouſt the heir who is in by Diſcent of the Freehold which is diſcended unto him, but only claimeth to have the Lands for term of years which is no expulſion from the freehold of the heir who is in by diſcent. But otherwiſe it is where my Tenant for term of life is diſſeiſed, *Cauſa patet, &c.*

PVr terme de 20 ans. It is cleer that a Diſcent ſhall not take away the entry of a leſſee for years, as our Author here ſaith, nor of a Tenant by Elegit, or Tenant by Statute Merchant, or ſuch like, as have but a Chattel and no Freehold, and the reaſon is, for that by their entry upon the heir by diſcent, they take no freehold (which as often hath been obſerved is ſo much reſpected in law) from him, but otherwiſe it is of an eſtate for life, or any higher eſtate. And as a Diſcent of a Freehold & Inheritance, ſhall take away the entry of him that right hath to a Freehold, or Inheritance, ſo a diſcent of a Freehold and Inheritance, cannot take away the entry of him that hath but a Chattel, for that no Diſcent or dying ſeiſed can be of the ſame.

A man ſeiſed of an advowſon in fee, grants three avoidances one after another, and after the Church becometh void, and the Grantor preſents, and his Clark is admitted and inſtituted, & after the Church becomes void again, the Grantee may preſent to the ſecond avoidance, for that he was not put out of the poſſeſſion thereof, for as the Leſſor having the Freehold and Inheritance cannot diſſeiſe his Leſſee for years, having but a Chattel, that any diſcent may be caſt, to take away his entry (as Littleton here ſaith:) ſo in the ſaid caſe, the Grantor hath the Franktenement and fee of the Advowſon rightfully, ſo as he cannot make any uſurpation, to gain any eſtate, or to put the Grantee ſo out of poſſeſſion as that he ſhould not preſent, no more than the Leſſee for years in this caſe, to enter. Alſo in reſpect of the priority that is between them, the uſurpation of the Grantor ſhall not put the Grantee out of poſſeſſion for the two latter avoidances. And this was reſolved (a) by all the Judges of the Court of Common Pleas, which I my ſelf heard and obſerved.

(a) Hill. 18. Eliz. in Communi Banco.

Sect. 412.

ITem, il eſt dit, que ſi home eſt ſeiſie de tenements en fee per occupation en temps de guerre, & ent mourt ſeiſie en

ALſo it is ſaid that if a man be ſeiſed of lands in fee by occupation in time of war, and thereof dieth ſeiſed in the

PEr occupation en temps de guerre.

Firſt it is neceſſary to be known, what ſhall be ſaid Time of peace, Tempus pacis: and what ſhall be ſaid, Tempus belli, ſive guerræ, time of war. Tempus pacis eſt quando

Inter brevia de anno 1. E 3. parte 1. & paſch. 28 E. 3. inter adjudicata coram Rege. lib. 2. f. 37. in theſaur. Paſch. 39 E. 3. inter adjudicata coram Rege in theſaur. lib. 2. fol. 92.

do Cancellaria, & aliæ Curiæ Regis ſunt apertæ, quibus lex fiebat cuicunque prout fieri conſuevit. And ſo was it adjudged in the caſe of Roger Mortimer, and of Thomas Earl of Lancaſter. Utrum terra ſit guerrina necne, naturaliter debet judicari per recorda Regis, & eorum, qui curias Regis per legem terræ cuſtodiunt, & gubernant, ſed non alio modo.

temps de guerre, et les tenements diſcendont a ſon heire, tiel diſcent ne oueſtera alcun home de ſon entry, & de ceo home poit dier en un plee ſur un briefe de Aiel, An. 7. E. 2.

time of war, and the tenements deſcend to his heir, ſuch diſcent ſhall not ouſt any man of his entry, and of this a man may ſee in a Plea upon a Writ of Aiel, 7. E. 2.

14. E. 3. tit. ſcire facias 122. but more fully in the Record at large.

And therefore when the Courts of Juſtice be open, and the Judges and Miniſters of the ſame may by Law protect men from wrong and violence, and diſtribute Juſtice to all, it is ſaid to be time of peace. So, when by Invaſion, Inſurrection, Rebellions, or ſuch like, the peaceable courſe of Juſtice is diſturbed and ſtopped, ſo as the Courts of Juſtice be as it were ſhut up, Et ſilent leges inter arma, then it is ſaid to be time of war. And the trial hereof is by the Records, & Judges of the Court of Juſtice, for by them it will appear, whether Juſtice had her equal courſe of proceeding at that time or no, and this ſhall not be tryed by Jury.

If a man be diſſeiſed in time of peace, and the Diſcent is caſt in time of war, this ſhall not take away the entry of the Diſſeiſee.

Bracton, lib. 4. fol. 240. Item tempore pacis, quod dicitur ad differentiam eorum quæ fuerunt tempore belli, quod idem eſt, quod tempore guerrino, quod nihil differt à tempore juris, & injuriæ, eſt enim tempus injuriæ, cum fuerunt oppreſſiones violentæ, quibus reſiſti non poteſt, & diſſeiſinæ injuſtæ.

So as hereby it alſo appeareth, that time of peace, is the time of Law and right, and time of war, is the time of violent oppreſſion, which cannot be reſiſted by the equal courſe of Law. And therefore in all real actions, the expleas, or taking of the profits, are laid Tempore pacis, for if they were taken Tempore belli, they are not accounted of in law.

Ingham cap. de novel diſſeiſin. ¶ *Per Occupation.* Occupation is a word of art, and ſignifieth a putting out of a mans Freehold in time of war, and it is all one with a diſſeiſin in time of peace, ſaving that it is not ſo dangerous, as it appeareth here by Littleton, and therefore the law gave a writ in that caſe of Occupavit, ſo called, by reaſon of that word in the writ, inſtead of diſſeiſivit in the Aſſiſe of Novel diſſeiſin, if the diſſeiſin had been done in time of peace, whereby it appeareth how aptly both in this, and in all other places, Littleton throughout his whole Work ſpeaketh.

Lib. 4. fol. 49, 50. Ognel's caſe. But albeit Occupatio whereof Littleton here ſpeaketh, is uſed only in the ſaid caſe, and in none other, (that I can find or remember) yet hath it been uſed commonly in Conveyances and Leaſes, to limit, or make certain, precedent words, as, ad tunc in tenura & occupatione. But occupatio, is applied to the poſſeſſion, be it lawful, or unlawful: It hath alſo crept into ſome Acts of Parliament, as 4. H. 7. cap. 19. 39. Eliz. cap. 1. and others, and occupare, is ſometime taken to conquer.

¶ *Et de ceo home poit vier en un plea ſur briefe de Aiel, anno* 7. E. 2. Hereby it appears, that ancient terms or years, after the example of Littleton, are to be cited and vouched, for confirmation of the law, albeit they were neither printed, and that of thoſe years, thoſe eſpecially of E. 1. H. 3. &c. are worthy of the reading and obſervation: a great number of which I have ſeen and obſerved, which in mine opinion do give a great light, not only to the underſtanding and reaſon of the Common Law, (which Fortheſcue either law not, or were by him omitted) but alſo to the true expoſition of the ancient ſtatutes made in thoſe times, yet mine advice is, that they be read in their time: for albeit our Student is enabled and armed to ſet on our year Books, or reports of the law, for [illegible] the latter reports, for two cauſes: Firſt, for that for the moſt part the latter [illegible] Reſolutions are the ſureſt, and therefore it is beſt to ſeaſon him with them in the beginning, both for the ſetting of his judgment, and for the retaining of them in memory. Secondly, for that the latter are more facile and eaſier to be underſtood, than the more ancient: but after the reading of them, then to read theſe others before mentioned, and all the ancient Writers that have written of our Law; for I would wiſh our Student to be a compleat Reader. But now to return. As it is in caſe of diſcent, ſo it is in caſe of preſentment, for an uſurpation in time of war putteth the right Patron out of poſſeſſion, albeit the Incumbent come in by inſtitution and induction: And time of war doth not only give privilege to them that be in war, but to all others within the Kingdom, and although the admiſſion and inſtitution be in time of peace, yet if the preſentment were in time of war, it putteth out the right Patron out of poſſeſſion.

6. E. 3. 41. 7. E. 3. darr. preſ. 2. 18. E. 2. quar. imp. 175. F. N. B. 31.

Sect.

Sect. 413.

¶ Item, que nul mozăr seisie (ou les tenements viendront a un auter per succession) tollera lentr̃ dascun person, &c. Come de Prelates, Abbots, Priors, Deans, ou Parson delglise, ou d̃ auters corps politike, &c. coment que ils fueront pr, mozants seisie, et pr. successors, ceo ne tolle jammes ascun home de son entrie.

¶ Plus serra dit de Discents en le prochein chapter.

ALso that no dying seised (where the tenements come to another by succession) shall take away the entry of any person, &c. As of Prelates, Abbots, Priors, Deans, or of the Parson of a Church or of other bodies politick, &c. albeit there were xx. dyings seised, and xx. successors, this shall not put any man from his entry.

More shall be said of Discents in the next chapter.

¶ PER *succession.* This in the Common Law is applied only to bodies politick, or Corporate, which have succession perpetual, and not to natural men; as to a Bishop and his successors, or to an Abbot, Dean, Archdeacon, Prebend, Parson, &c. & their successors, and not to I. S. or any other natural body & his successors, but to him and his heirs. And the Successor of any of these is in the Post, and the heir of the natural man is in the Per, and Succedere, is derived of Sub & cedere. Vid. Sect. 1. 7.E.3.25.2.5.E.3.13. & 31.

¶ *Corps politique, &c.* This is a body to take in succession, framed (as to that capacity) by policy, and thereupon it is called here by Littleton a body politick, and it is also called a Corporation, or a body incorporate, because the persons are made into a body, and are of capacity to take and grant, &c. And this body politick, or incorporate may commence, and be established three manner of ways, viz. by prescription, by letters patents, or by act of Parliament. Every body politick or corporate, is either Ecclesiastical or Lay: Ecclesiastical, either regular, as Abbots, Priors, &c. or secular, as Bishops, Deans, Archdeacons, Parsons, Vicars, &c. Lay, as Maior and Commonalty, Baylifs and Burgesses, &c. Also every body Politick, or Corporate, is either elective, presentative, collative, or donative. And again it is either sole, or aggregate of many; as you may read in the third part of my Commentaries. And this body Politick, or Corporate, aggregate of many, is by the Civilians called Collegium, or Universitas. Lib. 3. fo. 73. in the case of the Dean and Chapter of Norwich.

CHAP. 7. Continual Claim. Sect. 414.

¶ Ontinual claim est la lou home ad droit et title dentrer en aſtuns terres ou tenemẽts dont auter est seisie en fee, ou en fee tail, si testy que ad title dentrer fait con-

COntinual claim is where a man hath right and title to enter into any lands or tenements whereof another is seised in fee, or in fee tail, if he which hath title to enter makes continual claim to the lands or tene-

¶ HEre our Author first describeth what a continual claim is. It is called Continuum Clameum, because at the Common Law it must have been made within every year and day, as Littleton here teacheth. And yet if he that right hath, maketh claim, and the Tenant dieth within the year and the day, this claim though it be but once Mirror cap. 1. sect. 15. & sect. 18. Bracton, l. 5. fo. 435, 436. Britton 107. b, 126. 4. Fleta lib. 6. cap. 52, 53. Vid. Sect. 424. Vid. Sect. 385, 32 H. 8. P. 33.

(a) Vid. Sect. 424.

once (a) made (as hath been ſaid) ſhall preſerve the entry of him that maketh the claim.

¶ *Ad droit & title denter.* And yet in ſome caſes, a continual claim may be made by him that hath right, and cannot enter.

If Tenant for years, Tenant by Statute Staple, Merchant, or Elegit, be ouſted, and he in the reverſion diſſeiſed, the Leſſor, or he in reverſion, may enter to the intent to make his claim, and yet his entry as to take any profits, is not lawful during the term. And in the ſame manner, the Leſſor or he in the reverſion in that caſe, may enter to avoid a collateral warranty, or the Leſſor in that caſe may recover in an aſſiſe: And ſo (as ſome have holden) may the Leſſor enter in caſe of a leaſe for life, to this intent, to avoid a Diſcent, or a Warranty.

Dyer 19 El. Pl. com. 374
15. H. 7. 3. 4. Jacobins caſe.
28. H. 6. 28.
Vid. Sect. 442. 45. E. 3. 22

If the Diſſeiſee make continual claim, and the Diſſeiſor die ſeiſed within the year, his heir within age, and by office the King is intitled to the Wardſhip, albeit the entry of the Diſſeiſee be not lawful, yet may he make continual claim to avoid a diſcent, and ſo in the like.

7. H 6. 40. Contin. Claim 1.
Downclers caſe. 5. E. 4. 4

¶ *Uncore poit celuy que fait tiel clayme ou ſon heire enter.* This is to be underſtood in this manner, that if the father make claim, and the diſſeiſor dieth, and then the Father dieth, that his heir may enter, becauſe the diſſeiſin was caſt in the Fathers time, and the right of entry which the Father gained by his claim, ſhall deſcend to his heir. But if the Father make continual claim, and dieth, and the ſon make no continual claim, and within the year and day after the claim made by the Father the Diſſeiſor dieth, this ſhall take away the entry of the Son, for that the diſcent was caſt in his time, and the claim made by the Father ſhall not avail him, that might have claimed himſelf. And of this opinion was Littleton himſelf in our books, where he holdeth, that no continual claim can avoid a diſcent, unleſs it be made by him that hath title to enter, and in whoſe life the dying ſeiſed was. See more of this matter hereafter, in this chapter Sect. 416.

Bracton, lib. 5. fo. 436.
Fleta, lib. 5. cap. 32, 33.
22. H. 6. 37. 9. H. 4. 5. 22. 15. E. 4. 22. 2.

And as here Littleton putteth his caſe of the Anceſtor and Heir, ſo it holdeth in all caſes of the Predeceſſor and Succeſſor.

22. H. 6. 37.

tinual claime a les terres ou tenements devant l' moyant ſeiſie de celuy que tient les tenements, donqz coment q̄ tiel tenant moyuſt ent ſeiſie, & les terres ou tenements diſcendyont a ſon heire, uncoze poit celuy que avoit fait tiel claime ou ſon heire, enter & les terres, ou tenements iſſint diſcendus, per cauſe de le continual claim fait, nient contreſtiant le diſcent. Sicome en caſe q̄ home ſoit diſſeiſie, & le diſſeiſee fait continual claime a les tenements en la vie le diſſeiſor, comẽt que le diſſeiſor devie ſeiſie en fee, & la terre diſcendiſt a ſon heire, uncoze poit le Diſſeiſee enter ſur la poſſeſſion le heire, nient obſtant le diſcent.

ments before the dying ſeiſed of him which holdeth the tenements, then albeit that ſuch tenant dieth thereof ſeiſed, and the lands or tenements deſcend to his heir, yet may he who hath made ſuch continual claim or his heir enter into the lands or tenements ſo deſcended by reaſon of the continual claim made, notwithſtanding the diſcent. As in caſe that a man be diſſeiſed and the diſſeiſee makes continual claim to the tenements in the life of the diſſeiſor, although that the diſſeiſor dieth ſeiſed in fee and the land deſcend to his heir, yet may the Diſſeiſee enter upon the poſſeſſion of the heir notwithſtanding the diſcent.

Sect. 415.

¶ EN meſme l' maner eſt, ũ tenant a terme de vie alien en fee, celuy en le reverſion, ou celuy en le remainder poit enter ſur lalienee, & ũ tiel alienee devie ſeiſie de tiel eſtate ſans continual claime fait a les tenements devant le mozant ſeiſie del alienee, & les tenements per cauſe del mũrant ſeiſie del alienee, diſcendont a ſon heire, donques ne poit celuy en le reverſion, ne celuy en le remainder enter. Des ũ celuy en le reverſion ou celuy en le remainder que ad cauſe dentre ſur lalienee fait continual claime a les tenements devant le mozant ſeiſie del alienee, donques tiel hõe poit enter apres la mozt lalienee, auxybien come il puiſſoit en ſa vie.

¶ IN the ſame manner it is, if tenant for life alien in fee, he in the reverſion or he in the remainder may enter upon the alienee. And if ſuch alienee dieth ſeiſed of ſuch eſtate without continual claim made to the tenements, before the dying ſeiſed of the alienee, and the lands by reaſon of the dying ſeiſed of the alienee deſcend to his heir, then cannot he in the reverſion, nor he in the remainder enter. But if he in the reverſion or in the remainder, who hath cauſe to enter upon the alienee, make continual claim to the land before the dying ſeiſed of the alienee, then ſuch a man may enter after the death of the alienee, as well as he might in his life time.

¶ By this it appeareth, that a continual claim may be made as well where the lands are in the hands of a Feoffee, &c. by title, as in the hands of a Diſſeiſor, Abator, or Intruder, by wrong, as before hath been noted.

Sect. 416.

¶ Item, ũ terr̃ ſoit leſſe a un home pur terme de ſa vie, le remainder a un autr̃ a terme de vie, le remainder a le tierce en fee, ũ le tenant a terme de vie aliena a grauter en fee, & celuy en le remainder pur terme de vie fait continual claime a la terre devant le mozant ſeiſie dalienee,

ALſo if land be let to a man for term of his life, the remainder to another for term of life, the remainder to the third in fee, if tenant for life alien to another in fee, and he in the remainder for life maketh continual claim to the land before the dying ſeiſed of the Alienee, and after the

¶ *Alien a un auter en fee.* It is to be obſerved, that a forfeiture may be made by the alienation of a particular Tenant, two manner of ways, either in Pais, or by matter of Record.

In Pais, of lands and tenements which lie in livery (whereof Littleton intendeth his caſe) where a greater eſtate paſſeth by Livery, than the particular Tenant may lawfully make, whereby the reverſion or remainder is veſted, as here in the example that Littleton putteth, when tenant for life alieneth

vid. Sect. 581. 609, 610, 611.

in

in fee, which must be understood of a Feoffment, Fine, or Recovery by consent.

17.El.Dy.339. 16.El.Dy.324.

If Tenant for life, and he in the remainder for life in Littletons case, had joined in a Feoffment in fee, this had been a forfeiture of both their estates, because he in the remainder is particeps injuriæ. And so it is if he in the remainder for life had entred, and disseised Tenant for life, and made a Feoffment in fee, this had been a forfeiture of the right of his remainder.

3.E.3.Devise 21. 15.E.4.9.Vide Sect. 608,609,610.

A particular estate of any thing that lies in grant, cannot be forfeited by any grant in Fee by Deed. As if Tenant for life or years of an Advowson, Rent, Common, or of a reversion or remainder of Land, by deed grant the same in fee, this is no forfeiture of their estates, for that nothing passes thereby, but that which lawfully may pass, & of that opinion is Littleton in our Books.

35.H.6.62. Tr.22.El.in Informat. de intrusion vers. Robinson pur le Manor de Drayton Basset, so resolved by the Court of Exchequer.

But if Tenant for life or years of Land, the reversion or remainder being in the King, make a Feoffment in fee, this is a forfeiture, and yet no reversion or remainder is divested out of the King, and the reason is in respect of the solemnity of the feoffment by livery, tending to the Kings disherison.

& puis lalienee mourust seisie, & puis apres celuy en le remainder pur terme de vie mourust, debiunt ascun entrie fait per luy, en cē cas, celuy en le remainder en Fee, poit enter sur heire le alienee, per cause de continual claime fait per luy que avoit le remainder pur terme de sa vie, pur ceo que tiel droit que il averoit dentre, alera & remaindera a celuy en le remaindera apres luy, entant que celuy en l'remainder en fee ne puissoit pas enter sz lalienee en fee durant la vie celuy en le remainder p̄ terme d̄ sa vie, & pur ceo que il ne puissoit adonqz faire continual claim. (Car nul poit faire continual claim mes quant il ad title dentrie, &c.)

alienee dieth seised, & after he in the remainder for life die before any entry made by him, in this case he in the remainder in Fee may enter upon the Heir of the Alienee, by reason of the continual claim made by him which had the remainder for life, because that such right as he had of entry, shall go and remain to him in the remainder after him, insomuch as he in the remainder in Fee, could not enter upon the Alienee in fee during the life of him in the remainder for life, and for that he could not then make continual claim. (For none can make continual claim but when he hath title to enter, &c.)

By matter of Record, and that by three manner of ways: First, by alienation. Secondly, by claiming a greater estate than he ought. Thirdly, By affirming the Reversion or remainder to be in a stranger.

First, By alienation, and that of two sorts, viz. By alienation divesting, or not divesting the reversion or remainder. Divesting, as by levying of a fine, or suffering a common recovery of lands, whereby the reversion or remainder is divested: not divesting as by levying of a fine in fee, of an Advowson, Rent, Common, or any other thing that lieth in grant: and of this opinion is Littleton in our Books, (a) and so note two diversities: First, between a grant by Fine (which is of Record) and a grant by Deed in pais, and yet in this they both agree, That the reversion or remainder in neither case is divested. Secondly, Between a matter of record, as a Fine, &c. and a Deed recorded, as a Deed inrolled, for that worketh no forfeiture, because the Deed is the original.

a) 15.E.4.9.31.E.3.Gr. 62.14.E.3.3.Avow.117.

15.E.2.Judg.237. 6.E.3.49. 9.E.3.4. 18.E.2.Fines 120. 15.E.4.29.36.H.6.29. 2.H.6.9. 4.El.Dy. 9.H.5.14.22.Ass.31. 28.E.3.28.16 Ass.16.

Secondly, By Claim, and that may be in two sorts, either express, or implied. Express, as if Tenant for life will in Court of Record claim fee, or if Lessee for years be ousted, and he will bring an assise, Ut de libero Tenemento. Implyed, as if in a Writ of right brought against him, he will take upon him to join the mise upon the meer right, which none but Tenant in fee simple ought to do. So if Lessee for years do lose in a Præcipe, and will bring a Writ of Error, for Error in Process, this is a forfeiture.

Thirdly,

Thirdly, By affirming the reverſion or remainder to be in a ſtranger, & that either actively or paſſively. Actively, by five manner of ways. As firſt, if Tenant for life pray in aid of a ſtranger, whereby he affirms the reverſion to be in him. Secondly, if he attorn to the grant of a ſtranger; and there note alſo a diverſity, between an Attornment of Record to a ſtranger, and an Attornment in paiis, for an Attornment in paiis worketh no forfeiture. Thirdly, If a ſtranger bring a Writ of Entry in caſu proviſo, and ſuppoſe the reverſion to be in him, if the Tenant for life confeſs the action, this is a forfeiture. Fourthly, If Tenant for life plead covinously, to the diſheriſon of him in the reverſion, this is a forfeiture. Fifthly, If a ſtranger bring an action of waſte againſt Leſſee for life, and he plead Nul waſt fait, this is a forfeiture: or the like.

21. E. 3. 14. 2. 5. E. 4. 2. 24. H. 8. Fol. Br. 87. l. 2. fol. 55, 56. Buckle. s caſe. 27. E. 3. 77. 17. E. 3. 7. a. 39. E. 3. 16. 29. E. 3. 24. 5. Aſſ. 5. 5. E. 3. Entr. Cong. 42. 14. E. 3. Receit 135. 3. E. 3. 32. 24. E. 3. 68. 1. H. 7.

Paſſively, As if Tenant for life accept a fine of a ſtranger, Sur conuſans de droit come ceo, &c. for hereby he affirms of Record, the reverſion to be in a ſtranger.

3. Mar. Dy. 148.

Littleton here ſpeaketh of the forfeiture of an eſtate, and here it is to be known, that the right of a particular eſtate may be forfeited alſo, & that he that hath but a right of a remainder or reverſion, ſhall take benefit of the forfeiture. As if Tenant for life be diſſeiſed, and he levy a fine to the Diſſeiſor, he in the reverſion or remainder ſhall preſently enter upon the Diſſeiſor, for the forfeiture. And ſo it is, if the Leſſee after the Diſſeiſin, had levied a fine to a ſtranger, though to ſome reſpects, Partes finis nihil habuerunt, yet is it a forfeiture of his right.

Lib. 2 fol. 55 Buckler's caſe.

Littleton here ſpeaketh of an alienation in fee abſolutely, but ſo it is, if the Leſſee for life make a leaſe for any other mans life, or a gift in tail. If A. be Tenant for life, and make a leaſe to B. for his life, and B. dieth, and the leſſee re-entreth, yet the forfeiture remaineth.

13. E. 4. 4.

If Tenant for life make a leaſe for life, or a gift in tail, or a Feoffment in Fee, upon condition, and entreth for the condition broken, yet the forfeiture remaineth. Littleton ſpeaketh of an eſtate for life, ſo it is of Tenant in tail apres poſſibilitie, Tenant by the Courteſie, Tenant in Dower, or of him that hath an eſtate to him and his heirs, during the life of I. S. &c. and ſo of Tenant for years, Tenant by Statute Merchant, Statute Staple, or Elegit.

39. Aſſ. 15. 43. E. 3. Entry Cong. 30. 2. H. 5. 7. 39. E. 3. 16. 45. E. 3. 25.

Littleton ſaith, That where the alienation in fee is made to another, which muſt be intended a ſtranger, for if it be made to him in reverſion or remainder, it amounts to a ſurrender of his eſtate, as at large hath been ſpoken in the Chapter of Tenant for life.

By Littleton it appeareth, That Tenant for life in remainder may enter for the forfeiture of the firſt Tenant for life, and that if the Tenant for life in remainder make continual claim, and the Alienee die ſeiſed, then may he in the remainder for life enter, and if he die before he do enter, then he in the remainder in fee ſhall enter, becauſe he in the remainder in fee could not make any claim: and therefore the right of entry, which Tenant for life in remainder gained by his entry, ſhall go to him in the remainder in Fee, in reſpect of the priority of eſtate: and ſo it is of him in the reverſion in fee in like caſe, for he is alſo privy in eſtate.

If two Jointenants be diſſeiſed, and the one of them make continual claim and dieth, the ſurvivor ſhall take benefit of his continual claim, in reſpect of the priority of their eſtate.

But if Tenant for life make continual claim, this ſhall not give any benefit to him in the remainder, unleſs the Diſſeiſor died in the life of Tenant for life, for the cauſe aboveſaid, Section 414.

If Tenant in tail, the remainder in fee with garranty, have judgment to recover in value, and dieth before execution without iſſue, he in the remainder ſhall ſue execution, for he hath right thereunto, and is privy in eſtate.

In the ſame manner, if a Seigniory be granted by fine to one for life, the remainder in fee, the Grantee for life dieth, he in the remainder ſhall have a Per quæ ſervitia, for he hath a right to the remainder, and is privy in eſtate. Here alſo it appeareth, That none can make continuat claim, but he that hath right to enter.

Sect. 417.

¶ Mes eſt a veier a toy (mon fits) coment et en ql manner tiel Continual Claime ſerra fait, e ceo bien appzender trois choſes ſont a intender. La 1. choſe

But it is to be ſeen of thee (my ſon) how and in what manner ſuch Continual Claim ſhall be made: and to learn this well, three things are to be underſtood. The firſt

¶ *Si home ad cauſe dentrer en aſcuns terres ou tenements, &c.* It is not ſufficient to tell one generally what he ſhould do, but to direct him how, and in what manner he ſhall do it, as Littleton doth in this place. And here, the general rules of our Author are to be underſtood,

ſtood, that the entry of a man to recontinue his Inheritance or Freehold, muſt enſue his action for recovery of the ſame. As if three men diſſeiſe me ſeverally, of three ſeveral Acres of land, being all in one County, and I enter in one Acre, in the name of all the three Acres, this is good for no more, but for that Acre which I entred into, becauſe each Diſſeiſor is a ſeveral Tenant of the Freehold, and as I muſt have ſeveral Actions againſt them, for the recovery of the land, ſo mine entry muſt be ſeveral.

This hath been adjudged Mich. 14. & 15. Eliz. Rot. 1458. in the Earl of Arundels caſe.

And ſo it is, if one man diſſeiſe me of three acres of ground, and letteth the ſame ſeverally to three perſons for their lives, &c. there the entry upon one Leſſee, in the name of the whole, is good for no more than that acre, that he hath in his poſſeſſion. But if the Diſſeiſor had letten ſeverally the ſaid three Acres to three perſons for years, there the entry upon one of the leſſees, in the name of all the three Acres, ſhall recontinue & reveſt all the three acres in the Diſſeiſee, for that the Diſſeiſee might have had one Aſſiſe againſt the Diſſeiſor, becauſe he remained Tenant of the Freehold for all the three acres, and therefore one entry ſhall ſerve for the whole.

eſt, ſi home ad cauſe dentre en aſcuns terres ou Tenements que ſont en divers Villes deins un mſme Countie, ſil enter en un parcel de les terres ou Tenements que ſont en un Ville, en noſme de touts les terres ou Tenements as queux il ad droit dentr deins touts les Villes de meſme le Countie, per tiel entrie il avera auxy bone poſſeſſion, & ſeiſin de touts terres ou tenements dont il ad title dentrie, ſicome il avoit enter en fait en chescun parcel, & ceo ſemble grand reaſon.

thing is, If a man hath cauſe to enter into any lands or tenements in divers Towns in one ſame County, if he enter into one parcel of the lands or tenements which are in one Town, in the name of all the Lands or tenements into the which he hath right to enter, within all the Towns of the ſame County: By ſuch entry he ſhall have as good a poſſeſſion and ſeiſin of all the lands and tenements whereof he hath title of entry, as if he had entred indeed into every parcel; and this ſeemeth great reaſon.

7. Aſſ. 18. 12. E. 4. 10. 36. H. 6. 27. 32. Aſſ. pl. 1. If one diſſeiſe me of one acre at one time, and after diſſeiſe me of another acre in the ſame County at another time, in this caſe mine entry into one of them in the name of both is good, for that one aſſiſe might be brought againſt him for both Diſſeiſins.

11. H. 7. 25. Dyer 16. El. 337. But if I infeoffe one of one acre of ground upon condition, and at another time I infeoffe the ſame man of another acre in the ſame County upon Condition alſo, and both the conditions are broken, an entry into one acre in the name of both is not ſufficient, for that I have no right to the land, nor action to recover the ſame, but a bare title, and therefore ſeveral entries muſt be made into the ſame, in reſpect of the ſeveral conditions. But an entry in one part of the land, in the name of all the land ſubject to one condition, is good, although the parcels be ſeveral, and in ſeveral Towns. And ſo note a diverſity, between ſeveral rights of entry, and ſeveral titles of entry, by force of a condition.

¶ *Deins meſme la Countie.* For if the lands lie in ſeveral Counties, there muſt be ſeveral actions, and conſequently ſeveral entries, as hath been ſaid.

5. H. 7. 7. 4. E. 4. 19. 12. E. 4. 11. a. ¶ *En noſme de tout, &c.* If one diſſeiſe me of two ſeveral acres in one County, and I enter into one of them generally, without ſaying, In the name of both; this ſhall reveſt only that Acre wherein Entry is made, as hath been ſaid, and that is proved by our Books which ſay, That if I bring an Aſſiſe of two acres, if I enter into one hanging the writ, albeit it ſhall reveſt that only acre, yet the writ ſhall abate.

¶ *Dont il ad title dentrie.* Here in a large ſenſe, title of Entry is taken for a right of Entry.

Sect.

Sect. 418.

¶ Car ſi home voile enfeoffer un auter ſans fait de certaine terres ou tenements, que il ad deins pluſours villes en un Countie, & il voile liberer ſeiſin al feoffee de parcel de tenements deins un ville en noſme de touts les terres ou tenements que il ad en meſme le ville, & en les auters villes, &c. touts les dits tenemẽts, &c. paſſant per force de le dit livery de ſeiſin a celuy a q̃ tiel feoffement en tiel maner eſt fait, & uncore celuy a que tiel livery de ſeiſin fuit fait, naveit droit en touts les terres ou tenements ẽ touts les villes, mes per cauſe d̃ livery de ſeiſin fait de parcel de les terres ou tenements en un ville: A multo fortiori il ſemble bone reaſon, que quant home ad title denter en les terres ou tenements en diders villes deins un m̃ County debãt a ſcun entry per luy fait, que per lentry fait p̃ luy en parcel de les terres en un ville en le noſme de touts les terres & tenements as queux il ad title denter deins meſme le Countie, ceo veſt un ſeiſin de touts en luy & per tiel entry il ad poſſeſſion & ſeiſin en fait ſicome il aveit enter en cheſcun parcel, &c.

¶ FOR if a man will enfeoffe another without deed of certain lands or tenements which he hath in many Towns in one County, and he will deliver ſeiſin to the feoffee of parcel of the tenements within one Town in the name of all the lands or tenements which he hath in the ſame Town, and in other Towns, &c. all the ſaid tenements, &c. paſs by force of the ſaid livery of ſeiſin to him to whom ſuch feoffment in ſuch manner is made, and yet he to whom ſuch livery of ſeiſin was made hath no right in all the lands or tenements in all the Towns, but by reaſon of the livery of ſeiſin made of parcel of the lands or tenements in one Town: *A multo fortiori*, it ſeemeth good reaſon that when a man hath title to enter into the Lands or Tenements in divers Towns in one ſame County, before entry by him made, that by the entry made by him into parcel of the lands in one Town, in the name of all the lands and tenements to which he hath title to enter within the ſame County, this ſhall veſt a ſeiſin of all in him, and by ſuch entry he hath poſſeſſion and ſeiſin in deed, as if he had entred into every parcel.

¶ This is evident, but here is a diverſity between a feoffment and an entry, for a man may make a feoffment of lands in another County, and make livery of ſeiſin within the view, albeit he might peaceably enter & make actual livery, and ſo may he ſhew the magnitoꝛs in an aſſiſe, the view of lands in another County, but a man cannot make an entry into lands within the view where he may enter without any fear (for it is (a) one thing to inveſt and another to deveſt) as hereafter ſhall be ſaid in the Section next following. 38.E.3.11.38.Aſſ.23.

(a) Vid. Sect. next following.

¶ *A multo fortiori* Oꝛ à minore ad majus, is an argument frequent in our Authoꝛs, and in our Books, the foꝛce of argument in this place ſtanding thus: if it be ſo in a feoffment uſing a new right, much moꝛe it is foꝛ the reſtitution of an ancient right as the woꝛthier and moꝛe reſpected in law, which holdeth affirmatively, as our Authoꝛ here teacheth us. Vide Sect. 438.

¶ The reſt (&c.) in this Section need no explication.

Sect. 419.

Vide the Sect. preceding

HEre is to be obſerved, that every doubt or fear is not ſufficient, for it muſt concern the ſafety of the perſon of a man, and not his houſes or goods, for if he fear the burning of his houſes, or the taking away or ſpoiling of his goods, this is not ſufficient, becauſe he may recover the ſame, or damages to the value without any corporal hurt.

7.E.4.21.39.H.6.5.

Again if the fear do concern the perſon, yet it muſt not be a vain fear, but ſuch as may befall a conſtant man, as if the adverſe party lie in wait in the way with weapons, or by words menace, to beat, maim or kill him, that would enter, and ſo in pleading muſt he ſhew ſome juſt cauſe of fear, for fear of it ſelf is internal and ſecret. But in a ſpecial verdict, if the Jurors do find, that the Diſſeiſee did not enter for fear of corporal hurt, this is ſufficient and ſhall be intended that they had evidence to prove the ſame. Talis enim debet eſſe metus qui cadere poteſt in virum conſtantem, & qui in ſe continet mortis periculum, & corporis cruciatum. Et nemo tenetur ſe infortuniis & periculis exponere.

39.E.3.28. 11.R.2.tit.dures 2. 12.H.4.19.20. Bract.lib.2.fol.16.b. Britton fol.19.66. Fleta lib.3.cap.7.& lib.2. cap. 54.49.E.3.14.14.H.4.13 39.Aſſ.11. 11.H.6.51. 38.H.6.27. 39.H.6.36.5.20.H.6.28. 4.E.4.17. 12.E.47.28. H.6.8.41.E.3.9.11. H.4.6. 8.Aſſ.25. Vide Sect.434. W.2.cap.49. 13.H.4.dures 20.

LE ſecond choſe eſt a entender, q̄ ſi hõe ad title denter en aſcuns terres ou tenements, ſil ne oſaſt enter en mſ les terres ou tenements, ne en aſcun parcel de ē p̄ doubt d̄ battery, ou per doubt de mayhem, ou per doubt de mort, ſil aſaſt & approch auxy pres les tenements, come il oſaſt pur tiel doubt, et claime per parol les tenements eſtre les ſoens, maintenant per tiel claime il ad un poſſeſſiõn, & ſeiſin ē les tenemẽts, auxybñ come ſil uſt enter en fait, coment que il naboit unque poſſeſſiõn ou ſeiſin d̄ meſme les terres ou tenũts devant le dit claime.

THe ſecond thing to be underſtood is, that if a man hath title to enter into any lands or tenements, if he dares not enter into the ſame lands or tenements, nor into any parcel thereof for doubt of beating, or for doubt of maiming, or for doubt of death, if he goeth and approach as neer to the tenements, as he dare for ſuch doubt, and by word claim the Lands to be his, preſently by ſuch claim he hath a poſſeſſion and ſeiſin in the lands, as well as if he had entred in deed, although he never had poſſeſſion or ſeiſin of the ſame lands or tenements before the ſaid claim.

And it ſeemeth that fear of impriſonment is alſo ſufficient, for ſuch a fear ſufficeth to avoid a Bond or a Deed, for the law hath a ſpecial regard to the ſafety and liberty of a man. And impriſonment is a corporal damage, a reſtraint of liberty, and a kind of captivity. But ſee in the ſecond part of the Inſtitutes, W.2.cap.49. a notable diverſity between a claim or an entry into land, and the avoidance of an Act or Deed for fear of battery.

¶ *Per tiel claime il ad un poſſeſſion & ſeiſin, &c.* Here is to be obſerved, that there be two manner of Entries, viz. an Entry in Deed and an Entry in Law. An Entry in Deed is ſufficiently known; an entry in law is when ſuch a claim is made as is here expreſſed, which entry in law is as ſtrong and as forcible in law as an entry in Deed, and that as well where the lands are in the hands of one by title as by wrong. And therefore upon ſuch an entry in law an Aſſiſe doth lie, aſwel as upon an entry in Deed, and ſuch an entry in law ſhall avoid a warranty, &c.

Vide Sect.378. 11.H.6.51.

Vide Sect.442. Pl.Com.93.in Aſſ. de freſhforce. The Parſon of Honylanes Caſe.

But here is a diverſity to be obſerved between an entry in law, and an entry in deed, for that a continual claim of the Diſſeiſee being an entry in law ſhall veſt the poſſeſſion and ſeiſin in him for his advantage, but not for his diſadvantage. And therefore if the Diſſeiſee bring an aſſiſe, and hanging the aſſiſe, he make continual claim, this ſhall not abate the aſſiſe, but he ſhall recover damages from the beginning, but otherwiſe it is of an entry in deed. See more of this matter after in this Chapter, Sect.422.

Sect.

Sect. 420.

ET que la ley eſt tiel, il eſt bien prove per un plee dun aſſiſe en le Liber Daſſ, An. 38. E. 3. P. 32. le tenor de quel enſuit en tiel forme. En le County de Dorſet devant les Juſtices trove fuit per verdit daſſiſe, que le plaintife que avoit droit per diſcent de heritage daver les tenements mis en plaint, al temps del morant ſon anceſtor, fuit demurrant en le ville ou les tenements fuerent, et per parol ſe claime les tenements enter ces viſines, mes pur doubt de mort il nota approcher les tenements, mes port laſſiſe, et ſur ceſt matter trove, agard fuit que il recovera, &c.

AND that the Law is ſo, it is well proved by a plea of an Aſſiſe in the Book of Aſſiſes *An.* 38. *E.* 3. *P.* 32. the tenor whereof followeth in this manner. In the County of Dorſet before the Juſtices, it was found by verdict of Aſſiſe, that the Plaintif which had right by deſcent of Inheritance to have the tenements put in plaint, at the deceaſe of his Anceſtor was abiding in the Town where the tenements were, & by paroll claimed the tenements amongſt his neighbours, but for fear of death he durſt not approach the tenements but bringeth his Aſſiſe, and upon this matter found, it was awarded that he ſhould recover, &c.

HEre it appeareth that our Book Caſes are the beſt proofs what the Law is, Argumentum ab authoritate eſt fortiſſimum in Lege. And for proof of the Law in this particular caſe, Littleton here citeth a caſe in 38. E. 3. but it is miſprinted, for the original acord ing to the truth is, in the Book of Aſſiſes, 38. E. 3. p. 23. and not placito 32. for there be not ſo many pleas in that year. And after the example of Littleton, Book Caſes are principally to be cited for deciding of caſes in queſtion, and not any private opinion. Teſte noſipo. What ſhall be ſaid of the matter implied in this Section in the next following. 38. Aſſ. p. 23.

Sect. 421.

LA tierce choſe eſt a entender, deins quel temps et per quel temps le claime que eſt dit continual claime, ſerve a aidera celuy que fait le claime, et ſes heires. Et quant a ceo eſt aſcavoir, que celuy que ad title denter, quant il voiet faire ſon claime, ſi il doit approacher la

THe 3. thing is to know within what time & by what time the claim which is ſaid continual claim ſhall ſerve and aid him that maketh the claim, & his heirs. And as to this, it is to be underſtood, that he which hath title to enter, when he will make his claim, if he dare approach the Land then

COvient a luy daler & approcher auxi pres, &c. By this it ſhould ſeem that by the authority of our Author, if the Demandant cometh as neer to the Land as he dare, &c. and maketh his claim, this ſhould be ſufficient, albeit he be not within the view.

And the great authority of the Book (a) in 9. H. 4. (being by the whole Court) is not againſt this, for that caſe is put where there is no ſuch fear, as here our Author mentioneth in him that makes the continual claim, (a) 9. H. 4. 3.

and then he that makes the continual claim ought to be within the view of the land, and therefore the authority of this Book, as it is commonly conceived, is not against the opinion of our Author in the point aforesaid. But then it is further objected, that the said Book is against another opinion of our author in this Section, viz. that where there is no fear, &c. he that maketh a continual claim ought to go to the land or to parcel thereof to make his claim, and therefore in that case he cannot make a claim within the view of the land.

terre donqz il couient aler a la terre ou a parcel de ceo, & faire son claime, & sil nosast approcher la terre pur doubt ou paour de baterie, ou mayhe, ou mort, donques couient a luy aler & approcher auxpres come il osast vers la terre, ou parcel de ceo, a faire son claim.

he ought to go to the land, or to parcel of it, and make his claim, and if he dare not approach the land for doubt or fear of beating or maiming, or death, then ought he to go and approach as neer as he dare towards the land or parcel of it to make his claim.

a 11.H.6.51. agreeth with our Author in this point.

To this it is answered, that where a continual claim shall devest any estate in any other person in any lands or tenements, there, as it hath been said, he that maketh the claim ought to enter into the land or some part thereof according to the opinion of our Author: but where the claim is not to devest any estate, but to bring him that maketh it into actual possession, there a claim within the view sufficeth; as upon a discent, the heir having the freehold in law may claim land within the view to bring himself into actual possession, and in that sense is the opinion of Hull and the Court to be intended. Et sic in similibus. But yet the entry into some parcel in the name of the residue is the surest way.

Vide Sect. 177.

Sect. 422.

Vide Sect. 385. 426. 9.H.4.5. 14.H.4.36. 7.E.3.37. Pl.Com.356. 357. 367. Mirror, cap.2. Sect.18. Britton, fo. 45.b. & 126.

Deins lan, & le jour. It is to be observed that the Law in many cases hath limited a year and a day to be a legal & convenient time for many purposes. As at the Common Law upon a fine or final judgment given in a Writ of right, the party grieved had a year and a day to make his claim. So the wife or heir hath a year and a day to bring an appeal of death. If a Villein remained in ancient Demesne a year and a day he is priviledged. If a man be wounded or poysoned, &c. and dieth thereof within the year and the day, it is felony. By the ancient Law if the Feoffee of a Disseisor had continued a year and a day, the entry of the Disseisee for his negligence had been taken away. After judgment given in a real action, the Plaintif within the year and the day may have a Habere facias seisinam, and in an action of debt, &c. a Capias, Fieri facias, or a Levari facias. A protection shall be allowed but for a year and a day, and no longer, and in many other cases.

Vide Sect. 385.

But this time of a year and a day in case of continual claim is since our Author wrote altered by the said Statute of 32.H.8.cap.33. as before it appeareth.

Et si son adversarie q occupia le terre, morust seisie en fee, ou en fee taile deins lan et le jour apres tiel claim, per que les tenemēts discendont a son fits come heire a luy, uncore poit celuy que fit le claime entrer sur le possession le heire, &c.

And if his adversary who occupieth the land dieth seised in fee, or in fee tail within the year and a day after such claim, whereby the lands descend to his son as heir to him, yet may he which makes the claim enter upon the possession of the heir, &c.

Sect.

Sect. 423.

MEs en ceſt cas apres lan & le jour que tiel claim fuit fait, ſi le pere donques mouſt ſeiſi ademain procheine apres lan & le jour, ou un auter jour apres, &c. donques ne poit celuy que fiſt le claime entrer: & pur ceo ſi celuy que fiſt le claime doit eſtre ſure a touts temps que ſon entre ne ſerra toll per tiel diſcent, &c. il covient a luy que deins lan & le jour apres le primer claime fait, de faire un auter claime en le forme avantdit, & deins lan & le jour apres le ſecond claime fait, de faire le tierce claime en meſm le maner, et deins lan et le jour de le tierce claime, de faire un auter claime, et iſſint ouſter, ceſtaſcadoit, de faire un claime deins cheſcun an et jour procheine apres cheſcun claime fait durant la vie ſon adverſarie, et donques, a quelconq; temps ſi ſon adverſarie maſt ſeiſi, ſon entrie ne ſerra colle per nul tiel diſcent. Et tiel claim en tiel maner fait, eſt pluis communement priſe et noſme Continual claime de luy que fiſt le claime.

BUt in this caſe after the year and the day that ſuch claim was made, if the Father then died ſeiſed the morrow next after the year and the day, or any other day after, &c. then cannot he which made the claim enter: And therefore if he which made the claim will be ſure at all times that his entry ſhall not be taken away by ſuch diſcent, &c. it behoveth him, that within the year and the day after the firſt claim made, to make another claim in form aforeſaid, and within the year and the day after the ſecond claim made, to make the third claim in the ſame manner, and within the year and the day after the third claim to make another claim, and ſo over, that is to ſay, to make a claim within every year and day next after every claim made during the life of his adverſary, and then at what time ſoever his adverſary dieth ſeiſed, his entry ſhall not be taken away by any diſcent. And ſuch claim in ſuch manner made is moſt commonly taken and named continual claim of him which maketh the claim, &c.

IT is to be obſerved, that the year and the day ſhall be ſo accounted, as the day wherein the Claim was made ſhall be accounted one: as for example, If the claim were made 2. Die Martii, that day ſhall be accounted for one, for Littleton ſaith in the Section next before (after the claim made) and then the year muſt end the firſt day of March, and the day after is the ſecond day of March.

See for the computation of the year, De anno biſextili, and of the day natural and artificial, and other parts of the year, (a) Bracton, (b) Britton, and (c) Fleta excellent matter.

Vide Sect. 385.

(a) Bract. fol. 264. 344. 359.
(b) Britton, fol. 209.
(c) Fleta, lib. 6. cap. 11. Statute de anno biſextili. 21. H. 3. Dier 17. Eliz 345.

Sect. 424.

MEs uncore en le cas avantdit, lou ſon adver-

BUt yet in the caſe aforeſaid, where his adverſary dieth

ſarie

ſarie mozuſt deins lan & la jour pzocheine apzes le claime, ceo eſt en Ley un Continual Claime entant, que ladverſarie deins lan & le jour pzocheine apzes meſme la claime mozuſt. Car il ne beſoigne a celuy que fiſt ſon claime de faire eſtun autet claime, mes a quel temps que il doit deins meſme lan & jour, &c.

within the year and the day next after the claim, this is in Law a Continual Claim, inſomuch as his adverſary within the year and the day next after the ſame claim, dieth. For he which made his claim, needeth not to make any other claim, but at what time he will, within the ſame year and day, &c.

Vide Sect. 414.

This is evident.

Sect. 425.

ITem, ſi ladverſarie ſoit diſſeiſie deins lan & le jour apzes tiel claime, & le diſſeiſoz ent mozuſt ſeiſie deins lan et le jour, &c. tiel mozant ſeiſie ne griebera my celuy que fiſt le claime mes que il poit enter, &c. Car quelunque ſoit que mozuſt ſeiſie deins lan & le jour pzheine apzes tiel claime fait, ceo ne griebera my celuy que fiſt le claime, mes que il poit enter, &c. coment que fueront pluſoꝛs mozant ſeiſie, & pluſoꝛs Diſcents deins lan & le jour, &c.

ALſo if the adverſary be diſſeiſed within the year and the day after ſuch claim, and the Diſſeiſor thereof dieth ſeiſed within the year and the day, &c. ſuch dying ſeiſed ſhall not grieve him which made the claim, but that he may enter, &c. for whoſoever he be that dieth ſeiſed within the year and the day after ſuch claim made, this ſhall not hurt him that made the claim, but that he may enter, &c. albeit there were many dyings ſeiſed, and many Diſcents within the ſame year and day, &c.

THere it appeareth, that the continual Claim doth not only extend to the firſt Diſſeiſor, in whoſe poſſeſſion it was made, but to any other Diſſeiſor, that dieth ſeiſed within the year and day after the continual Claim made. And whereas our Author ſpeaketh of a ſecond Diſſeiſor, &c. herein is likewiſe implied not only Abators and Intruders, but the Feoffees or Donees of the Diſſeiſors, Abators, or Intruders, and any other Feoffee or Donee immediate or mediate, dying ſeiſed within the year and day, of ſuch continual Claim made.

Sect. 426.

ITem, ſi home ſoit diſſeiſie, & le Diſſeiſoz mozuſt ſeiſie deins lan & l' jour pzocheín apzes le diſſeiſin fait, per que les Tenements diſcendont a ſon

ALſo if a man be diſſeiſed, and the diſſeiſor dieth ſeiſed within the year and day next after the Diſſeiſin made, whereby the Tenements deſcend to his Heir, in this

heire

heire, en ceſt caſe lentrie le Diſſeiſee eſt toll, car lan & le jour que aidoit le Diſſeiſee en tiel caſe, ne ſerra pris de temps de title dentre a luy accrue, mes tantſolement de temps del claime per luy fait en le manner avantdit, & pur cel cauſe il ſerroit bone p̄ tiel diſſeiſee, pur faire ſon claime en aucy breve temps que il puiſſoit, apres le diſſeiſin, &c.

caſe the entry of the diſſeiſee is taken away, for the year and day which ſhould aid the Diſſeiſee in ſuch caſe, ſhall not be taken from the time of title of entry accrued unto him, but only from the time of the claim made by him in manner aforeſaid. And for this cauſe it ſhall be good for ſuch Diſſeiſee to make his claim in as ſhort time as he can after the Diſſeiſin, &c.

¶ This in caſe of a Diſſeiſor is now holpen by the Statute made ſince Littleton wrote, as hath been ſaid; for if the Diſſeiſor die ſeiſed within five years after the Diſſeiſin, though there be no continual claim made, it ſhall not take away the Entry of the Diſſeiſee, but after the five years, there muſt be ſuch Continual Claim as was at the common law: But that Statute extendeth not to any Feoffee or Donee of the Diſſeiſor immediate or mediate, but they remain ſtill at the common law, as hath been ſaid. 32. H. 8. cap. 32. Vide Sect. 385, 422.

Sect. 427.

¶ Item, ſi tiel Diſſeiſor occupia la terre per xl. ans, ou per pluſors ans ſans alcū claime fait per le diſſeiſee, &c. Et le Diſſeiſee per petit ſpace devaunt le mort del Diſſeiſor fait un claime en le forme avantdit, ſi ilūnt fortunaſt que deins lan & le jour apres tiel claime le Diſſeiſor morust, &c. lentrie le Diſſeiſee eſt congeable, &c. & pur ceo il ſerroit bone pur tiel home que ne eſt claime que ad bone title dentrie, quant il voet que ſon adverſarie gift languiſhment, de faire ſon claime, &c.

ALſo if ſuch Diſſeiſor occupieth the lands forty years, or more years, without any claim made by the Diſſeiſee, &c. and the Diſſeiſee a little before the death of the Diſſeiſor makes a claim in the form aforeſaid, if ſo it fortuneth, that within the year and the day after ſuch claim, the Diſſeiſor die, &c. the entry of the Diſſeiſee is congeable, &c. And therefore it ſhall be good for ſuch a man which hath not made claim, and which hath good title of Entry, when he heareth that his adverſary lieth languiſhing, to make his claim, &c.

¶ This is evident enough, and in reſpect of that which hath been ſaid, needeth not to be explained.

Sect. 428.

¶ Item, ſicome eſt dit en les caſes miſes, lou home

ALſo as it is ſaid in the caſes put where a man hath title

¶ Here title is taken in his large ſenſe to include a right.

¶ *Aſcun auter title, &c.* there

Here is implyed Abators or Intruders, and not only their Disseisors, but the Feoffees or Donees of Disseisors, Abators, or Intruders, or any other so long as the Entry is congeable.

ad title dentre pur cause dun Disseisin, &c. Mesme la Ley est lou home ad droit dentre per cause de alcun auter title, &c.

of entry by cause of a Disseisin, &c. the same Law is where a man hath right to enter by cause of another title, &c.

Sect. 429.

¶ Item, ou les dits Presidents poies scaber (mon fits) deux choses. Un est, lou home ad title dentre sur un Tenant en le taile, si fist un tiel claime a la fre donques est lestate Taile defeat, car cel claime est come entre fait per luy, & est de mesme leffect en Ley, sicome il fuissoit sur mesmes tenements, & fist entr en mesmes les Tenements come devant est dit. Et donques quant le Tenant en le taile immediate puis tiel claime continua son occupation en les tenements, ceo est un disseisin fait de mesmes les tenements, a celuy que fist tiel claime, & sic per consequens, le Tenant adonques ad fee simple.

ALso of the said foresaying thou mayst know (my son) two things. One is, where a man hath title to enter upon a Tenant in Tail, if he maketh such a claim to the Land, then is the estate tail defeated, for this claim is as an entry made by him, and is of the same effect in Law, as if he had bin upon the same tenements, and had entred into the same, as before is said. And then when the tenant in Taile, immediately after such claim continue his occupation in the lands, this is a Disseisin made of the same Tenements to him which made such claim, and so by consequent, the Tenant then hath a Fee simple.

¶ *Presidents.* This should be Precedents, and so is the original, and this agreeth with the right sense of Littleton.

And here it appeareth, that a Continual Claim, which is an Entry in law, is as strong as an Entry in deed.

Vide Sect. 650, and 659, &c.

¶ *Title de entrie.* Here Title de entrie is taken in the large sense for right of entrie.

Sect 430.

¶ Le second chose est, que auxy sovent que il que ad droit dentre fait tiel claime, & ceo nient contrestant son adversary continua son occupation, auxy sovent ladversary fait tort & disseisin a celuy que fist le claime. Et

THe second thing is, That as often as he which hath right of entry maketh such claim, & this notwithstanding his adversary continue his occupation, so often the adversary doth wrong and disseisin to him which made the claim.

pur

pur cel cauſe auxy ſovent poit ceſuy que fiſt in le claime pur chescun tiel tort & diſſeiſin fait a luy, aver un briefe de treſpas. Quare clauſum fregit, &c. et recovera ſes damages, &c.

And for this cauſe ſo often may he which makes the ſame claim for every ſuch wrong & diſſeiſin done unto him, have a writ of treſpaſs. *Quare clauſum fregit, &c.* and recover his damages, &c.

¶ HEreby alſo it appeareth, that an entry in Law is equivalent to an entry in Deed.

¶ *Avera breve de treſpaſſe*, quare clauſum fregit, *& recovera ſes damages.* The Diſſeiſee ſhall have an action of treſpaſs againſt the Diſſeiſor, and recover his damages for the firſt entry without any regreſs, but after regreſs he may have an action of treſpaſs with a Continuando, and recover as well for all the mean occcupation as for the firſt entry. And here note that Littleton doth here include coſts within damages.

Sect. 431.

¶ OUſi il poit aver un briefe ſur l'ſtatute le Roy, R. l'ſecond, fait lan de ſon raigne 5. ſuppoſant p ſon briefe, que ſon adverſary avoit ent et les terres ou tenements celuy que fiſt le claime, ou ſon entry ne fuit pas done per la ley, &c. & per tiel action il recovera ſes dammages, &c. Et ſi le caſe fuit tiel, que l'adverſary occupiaſt les tenements oue force et armes ou oue multitude de gents a tẽps de tiel claime, &c. immediate apres meſme le claime, poit celuy que fiſt le claime, pur chescun tiel fait aver un briefe de forcible entry, et recovera ſes treble damages, &c.

OR he may have a Writ upon the ſtatute of *R.* 2. made in the fifth year of his Reign, ſuppoſing by his Writ that his Adverſary had entred into the lands or tenements of him that made the Claim, where his entry was not given by the Law &c. and by this action he ſhall recover his damages, &c. and if the caſe were ſuch that the adverſary occupied the tenements with force and arms or with a multitude of people at the time of ſuch claim, &c. immediately after the ſame claim may he which made the claim for every ſuch act have a Writ of forcible entry & ſhall recover his treble damages, &c.

¶ *Du brieſe de forcible entrie & recovera ſes treble dammages.* This ſtatute

¶ THis is the ſtatute of 5. R. 2. cap. 7. 37.H.6.35 34.H.6.30. 13.H.7.15.10.H.6.14.

¶ *Per tiel action il recovera ſes dammages.* 2.E.4.18.21.E.4.5 74. 13.E.2.3.27.Aſſ.64. 38.Aſſ.9.44.E 3.20. 10.H.7.27.Keylway 1.b

This is to be underſtood, that he ſhall recover damages for the firſt tortious entry, but not for the mean profits in this action though he made a regreſs. And here note that alſo he ſhall recover his coſts of ſuit expenſæ litis, which Littleton doth include within theſe words (damages, &c.) 5.R.2.cap.7. 2.E.4.24.b.9.E.4.4.b. 16.H.7.6.a.

¶ *Dammages.* Damna in the Common Law hath a ſpecial ſignification for the recompence that is given by the Jury to the Plaintiff or Defendant, for the wrong the Defendant hath done unto him.

¶ *Multitude.* One or more may commit a force, three or more may commit an unlawful aſſembly, a riot or a rout. A multitude here ſeemeth (as ſome have ſaid) muſt be ten or more. Multitudinem decem faciunt. Bup ſo (ſay they) it is ſaid, de grege hominum. But I could never read it reſtrained by the common Law to any certain number, but left to the diſcretion of the Judges.

8 H.6.cap.9.3 E.4. 19 24
F N B.248.11.E.4 11.b. 6.H 7.12 b.22.H.6.37. 19 H.6. Regiſter 97. 22.H.6.57.F.N.B.249.a

is grounded upon the ſtatute of 8. H. 6. and lieth either where one entreth with force, or where he entreth peaceably and detaineth it with force, or where he entreth by force, and detaineth it by force. And in this action without any regreſs the Plaintif ſhall recover treble damages, as well for the mean occupation as for the firſt entry by force of the ſtatute. And albeit he ſhall recover treble damages, yet ſhall he recover coſts which ſhall be trebled alſo.

10.H.7.12.

One may commit a forcible entry as hath been ſaid, in reſpect of the armour or weapons which he hath that are not uſually born, or if he do uſe violence, and threats to the terrour of another. And if three or four go to make a forcible entry, albeit one alone uſe the violence, all are guilty of force. If the Maſter cometh with a greater number of ſervants than uſually attend on him, it is a forcible entry.

9 .H.6.20.

It is to be underſtood that there is a force implied in law, as every Treſpaſs and Reſcous and Diſſeiſin implieth a force, and is vi & armis, and there is an actual force, as with weapons, number of perſons, &c. and when an entry is made with ſuch actual force, an action doth lie upon the ſaid ſtatute. See before more of force and arms. Sect. 240.

Sect. 432.

¶ Item, il eſt a veier, ſi le ſervant dun home que ad title denter, poit per le commandement ſon Maſter faire continual claime pur ſon Maſter ou non.

ALſo it is to be ſeen, if the ſervant of a man who hath title to enter, may by the commandment of his Maſter make Continual Claim for his Maſter or not.

This needeth no explication.

Sect. 433.

¶ Et il ſemble que en aſcuns caſes il poit ceo faire, car ſi per ſon commandement vient a aſcun parcel de la terre q̄ la fait claime, &c. en le noſme ſon Maſter, ceſt claime eſt aſſets bone pur ſon Maſter, pur ceo que il fait tout ceo que ſon Maſter covient faire ou deboit faire en tiel cas, &c. Auxy ſi le Maſter dit a ſon ſervant, que il ne oſaſt bener a la terre, ne aſcun parcel de la terre, pur faire ſon claime, &c. et que il ne oſaſt approcher pluis prochein a la terre forſque a tiel lieu appell Dale, et commanda ſon ſervant aler a meſme le lieu de Dale, et la faire un claime pur luy, &c. ſi le ſervant iſſint fait, &c. ceo ſemble auxy bone claime pur ſon Maſter, ſicome

AND it ſeemeth that in ſome caſes he may do this; for if he by his commandment cometh to any parcel of the Land, and there maketh claim, &c. in the name of his Maſter, this claim is good enough for his Maſter, for that he doth all that which his Maſter ſhould or ought to do in ſuch caſe, &c. Alſo if the Maſter ſaith to his ſervant that he dares not come to the land, nor to any parcel of it to make his claim, &c. and that he dare approch no neerer to the land than to ſuch a place called Dale, and command his ſervant to go to the ſame place of Dale, and there make a claim for him, &c. if the ſervant doth this, &c. this alſo ſeemeth a good claim for his Maſter, as if his Maſter were

ſon

ſon Maſter la ſuit en proper perſon, pur ceo que le ſervant fiſt tout ceo que ſon Maſter oſaſt et deboit faire per la ley en tiel caſe, &c.

there in his proper perſon, for that the ſervant did all that which his Maſter durſt, and ought to do by the law in ſuch a caſe, &c.

¶ HEre it appeareth that where the ſervant doth all that which he is commanded, and which his Maſter ought to do, there it is as ſufficient as if his Maſter did it himſelf, for the rule is, Qui per alium facit per ſeipſum facere videtur.

¶ *Per Commandement.* If an infant or any man of full age have any right of Entry into any lands, any ſtranger in the name and to the uſe of the Infant or man of full age may enter into the lands, and this regularly ſhall veſt the lands in them without any commandment precedent or agreement ſubſequent. (a) But if a Diſſeiſor levy a fine, with Proclamation according to the ſtatute, an eſtranger without a commandment precedent, or an agreement ſubſequent within the five years cannot enter in the name of the Diſſeiſee to avoid the Fine. And that reſolution was grounded upon the conſtruction of the Statute of 4. H. 7. cap. 24. But an aſſent ſubſequent within the five years ſhould be ſufficient. Omnis enim ratihabitio retrotrahitur, & mandato æquiparatur, as hath been ſaid.

7. E. 3. 69. 2. b. 45. E. 3. Releaſe. 28. 45. E. 3. tit. Briefe 589. 20. E. 3. 62. per Thorp. 11. Aſſ. p. 11. 39 Aſſ. p. 18 10. H 7. 12. 2. 31. H 8. tit. entr. Cong. & tit. Fanxifier recovery 29. (a) Lib. 9. fo. 106. 2. the Lo. Awdleys caſe.

¶ *Auxy ſi le maſter dit a ſon ſervant que il ne oſaſt, &c.* Here it appeareth, that where the ſervant purſueth the commandment of his Maſter, and doth all that which his Maſter durſt and ought to do by the law, this is ſufficient. And although the Maſter feareth more than the ſervant, or admit that the ſervant hath no fear at all, yet if he goeth as far as his Maſter durſt and as he commanded, it is ſufficient. And this is implied in this Section.

Sect. 434.

¶ AUxy ſi home ſoit cy languiſhant, ou cy decreppte, que il ne poit per nul maner bener a la terre, ne a alcun parcel d̄ ycel, ou ſi un reclule ſoit, q̄ ne poit per cauſe de ſon ord̄ aler hors de ſa meaſon. Si tiel maner de perſon commaunda ſon ſervant daler et faire claime pur luy, & tiel ſervant ne oſaſt aler a la t̄re, ne a alcun parcel de ceo pur doubt de batery, mayhem, ou mort, &c. et pur cel cauſe tiel ſerv̄at di'ēt auxy pres a la terre come il oſaſt pur tiel

ALſo if a man be ſo languiſhing, or ſo decrepit that he cannot by any means come to the land nor to any parcel of it, or if there be a recluſe which may not by reaſon of his order go out of his houſe, if ſuch manner of perſon command his ſervant to go and make claim for him, and ſuch ſervant dare not go to the land nor to any parcel of it for doubt of beating, mayhem, or death, &c. and for this cauſe the ſervant cometh as neer to the land as he dareth for ſuch doubt

¶ REgularly it is true that where a man doth leſs than the Commandment or Authority committed unto him, there (the commandment or authority being not purſued) the act is void. And where a man doth that which he is authoriſed to do and more, there it is good for that which is warranted, & void for the reſt, yet both theſe rules have divers exceptions and limitations.

For the firſt, Littleton here putteth a caſe where the ſervant doth leſs than he is commanded, & yet it ſufficeth for that Impotentia excuſat legem, for ſeeing the maſter cannot, and the ſervant dare not enter into the land, it ſufficeth that he come as neer to the land as he dare.

If a man makes a Letter of Attorney to deliver ſeiſin to I. S. upon condition, and the Attorney delivereth it abſolute, this is void: and ſo ſome hold if the warrant be abſolute, and he delivereth 11. H. 4. 3. 12. Aſſ. 24. 26. Aſſ. 39.

seisin upon Condition, the Livery is void.

See before Sect. 419.

¶ *Pur battery, mayhem, ou mort.* See the second part of the Institutes W. 2. cap. 49. a diversity between the making of an Entry or Claim, and the avoidance of an Act or Deed.

¶ *Auterment le master serroit en tresgrand mischiefe.* Argumentum ab inconvenienti est validum in lege, quia lex non permittit aliquod inconveniens. And as hath been often observed before. Nihil quod est inconveniens est licitum.

46. E. 3. Petition 18. 33. H. 6. 8. 43. E. 3. 8. b. 30. a.

¶ *Recluse.* Reclusus, Heremita, seu Anchorita, so called by the order of his religion he is so mured or shut up. Quod solus semper sit, & in clausura sua sedet; and can never come out of his place. Seorsim enim & extra conversationem civilem hoc professionis genus semper habitat: Note here, albeit the Recluse or Anachorite be shut up himself, so as he by his order is not to come out in person, yet to avoid a Discent, he must command one to make claim, and such a Recluse shall always appear by Attorney in such cases where others must appear in proper person. Impotentia enim excusat legem.

doubt, et fait l'claim, &c. pur son Master, il semble que tiel claime pur son Master est assets fort, & bon en ley. Car autrement son Master serroit en tresgrand mischiefe, car il bien poit estre que tiel person q̄ est languishant, decrepite, ou recluse, ne poit trober alcun servant que oslt aler a la terr̄, ne alcun parcel de cel pur faire le claime pur luy, &c.

and maketh the claim, &c. for his Master, it seemeth that such claim for his Master is strong enough and good in law. For otherwise his Master should be in a very great mischief, for it may well be that such person which is sick, decrepit, or recluse, cannot find any servant which dare go to the land or to any parcel of it to make the claim for him, &c.

Sect. 435.

¶ Mes q̄ le Master de tiel servant soit de bone sane, et poit et oslt bien aler a les tenements, ou a parcel de ceo de faire son claime, &c. q̄ tiel Master commanda son servant daler a alcun parcel de la terre a faire claime pur luy, et quant le servant est an alant de faire le commandement de son Master, il oye per le voy tiels choses que il ne oslt bener a alcun parcel de la terre pur fait̄ le claime pur son Master, et pur cel cause il vient auxy pres la tre come il oslt pur doubt de mort, et la fait claime pur son Master, et en le nosme de son Master, &c. il semble que le doubt en le ley en tiel case serroit, q̄ tiel claime avaylera son Master, ou nemy,

But if the Master of such servant be in good health, and can and dare well go to the lands or to parcel of it to make his claim, &c. if such Master command his servant to go to any parcel of the land to make claim for him, and when the servant is in going to do the commandment of his Master, he heareth by the way such things as he dare not come to any parcel of the land to make the claim for his Master, and therefore he cometh as neer to the land as he dare for doubt of death, and there maketh claim for his Master, and in the name of his Master, &c. it seemeth that the doubt in law in such case shall be, whether such claim shall avail his Master

pur

pur ceo que le ſervant ne fiſt tout ceo que ſon Maſter al temps de ſon commandement oſaſt faire, &c. Quære.

or not, for that the ſervant did not all that which his Maſter at the time of his commandment durſt have done, &c. *Quære.*

¶ This Continual Claim is void, for that the ſervant doth leſs than that which is expreſly commanded, and there is no impotency or fear in the Maſter.

Sect. 436.

¶ Item aſcuns ont dit que lou home eſt en priſon, & eſt diſſeiſie, & le diſſeiſor mozult ſeiſie durant le temps q̄ le diſſeiſee eſt en priſon, per que les tenements diſcendont al heire del diſſeiſor, ils ont dit, que ceo ne noiera my le diſſeiſee que eſt en priſon, mes que il bīn poit enter, nient obſtant tiel diſcent, pur ceo que il ne puiſſoit faire continual claim, quant il fuit en priſon.

ALſo ſome have ſaid that where a man is in priſon and is diſſeiſed, and the Diſſeiſor dieth ſeiſed during the time that the Diſſeiſee is in priſon, whereby the tenements deſcend to the Heir of the Diſſeiſor, they have ſaid that this ſhall not hurt the Diſſeiſee which is in priſon, but that he well may enter, notwithſtanding ſuch a diſcent, becauſe he could not make continual claim when he was in priſon.

¶ *Quant home eſt en priſon & eſt diſſeiſie.* For if he be diſſeiſed when he is at large, & the diſcent is caſt during the time of his impriſonment, this diſcent ſhall bind him. 9.H.7.24.Pl.Com.360.

Excuſatur autem quis quod clameum ſuum non appoſuerit, ſi tempore litigii in priſona detentus fuerit, ita quod venire non poſſit, nec mittere, quia nulli vertitur in dubium, & ubi eadem ratio & idem jus erit, ideo videtur quòd excuſari debet quis ſi per vim majorem, vel per fraudem, extra priſonam detentus fuerit, ita quod venire non poſſit nec mittere, dum tamen hoc per certa judicia probari poterit. Bracton, lib. 5. fol. 436. Britton fol. 116. b. Fleta, lib. 6. cap. 52. 53. & lib. 6. cap. 7. & 14.

¶ *Pur ceo que il ne poit faire continual claime quant il fuit en priſon.* Here it is to be obſerved by the authority of Littleton, that he is not enforced in this caſe by law to do it by his ſervant or any other by his warrant or commandment, for things done by deputy are ſeldom well done, but every man will ſee his own buſineſs moſt effectually ſpeeded and performed, and that it may be once ſpoken for all, the reaſon that a man impriſoned ſhall not be bound, in this and the like caſes is, for that by the intendment of law he is kept (as it is preſumed in law without intelligence of things abroad, and alſo that he hath not liberty to go at large to make entry or claim, or ſeek counſel. And ſo note a diverſity between a recluſe who might have intelligence, and a man in priſon. Pl. Com. 360. in Stowels caſe.

Sect. 437.

¶ *MEs lopinion de touts les Juſtices, P.11.H.7. fuit, que ſi le diſſeiſin ſoit avant lenpriſonment, coment que le mozant ſeiſe ſoit, il eſteant en le priſon, ſon entrie eſt tolle.*

BUt the opinion of all the Juſtices, P.11.H.7. was, that if the diſſeiſin be before the impriſonment, although the dying ſeiſed be, he being in the priſon, his entry is taken away.

¶ This is of a new addition, and miſtaken, for there is no ſuch opinion, P.11.H.7. but it is, 9. H. 7. fol. 24. b.

¶ *Il*

Mirror cap 3. Britton, fol 21. Fleta, lib. 1. cap. 28. & lib 2. cap 59. Bracton, lib. 2. 2. *E* 4. 1 4. *E* 4. 10. 21 *E.* 4 73 11. *H* 7 5. 21 *H.* 6. 50 9. *H.* 4 3. 21. *H* 6. Utlary 36 7. *H.* 6 27. 21. *E.* 4. 88. 22. *E.* 4 37. 18. *E* 3. Villenage 47. 21. *E* 4. 37. 3. *H* 6. 45. 16 44 *E.* 3. Villein 41. 4. *H* 4. 19. 11 *H* 4 34. 3. *Eliz.* Dier 192 2 *Eliz.* 176 5. *Eliz* ibid. 223. 19. *H.* 6. 2. 8. *H.* 6. 37. 37. *H.* 6. 19.

8. *H.* 4. 7. 21 *H* 7. 13. 10. *H.* 6. 58. 20. *H* 6. 20. 21. *H.* 6 55 22. *H* 6. 18. 39. *H.* 6. 1. 33. *H.* 6. 51. 45. 38 *H.* 6. 33. 21. *E.* 4 34. 21 *H* 7 35. 5. *H* 7 1. 12. *H.* 6. 8 11. *H.* 6. 67. 15. 1. *E* 4 2 27 *H.* 8 2. 38. Ass pl. 17. Vide Sect. 439. 5 *E.* 3. 50. b. 7. *H* 6. 38. Fleta, lib 6. cap. 67. & 24 Vide W. 2. cap. 48 and the exposition thereof, 2. part Instit. 4. *E.* 2, Descent 51.

¶ *IL reversera tiel utlagarie.* Nota, the original is, Reversera tiel utlagarie per Briefe de Error, and so it would be amended: for Outlawries may be reversed two manner of ways, viz. by Plea, or by Writ of Error. By Plea, when the Defendant cometh in upon the Capias utlagatum, &c. he may by plea reverse the same for matters apparent, as in respect of a Supersedeas, Omission of Process, Variance, or other matter apparent in the Record, and yet in these cases some hold, That in another Term the Defendant is driven to his Writ of Error.

¶ FET auxy q̃ tiel que est en prison soit utlage in Action de Debt, ou trespasse ou en appeal de Robberie, &c. il reversera tiel utlagarie envers luy pnounce, &c.

And also if he which is in prison be outlawed in an Action of Debt or Trespass, or in an Appeal of Robbery, &c. he shall reverse this outlawry pronounced against him, &c.

But for any matters in fact, as death, imprisonment, service of the King, &c. he is driven to his Writ of Error unless it be in case of Felony, and there in favorem vitæ he may plead it.

But albeit imprisonment be a good cause to reverse an Outlawry, yet it must be by process of law in invitum, and not by consent or covin, for such imprisonment shall not avoid the Outlawry, because upon the matter it is his own act.

Sect. 438.

¶ THis is evident enough.

¶ *Per Briefe derror.* For he shall have no writ of discent, because the Summons was according to the law of the Land, by Summoners and Vetors, and the land taken into the Kings hand by the Perors.

¶ *Per default.* Default is a French word, and Defalta is legally taken for Non-apparence in Court. There be divers causes allowed by Law for saving a mans default, as first by Imprisonment, whereof Littleton here speaketh. 2. Per inundationem aquarum. 3. Per tempestatem. 4. Per pontem fractum. 5. Per navigium substractum per fraudem petentis, non enim debet quis se periculis & infortuniis gratis exponere, vel subjacere. 6. Per minorem ætatem. 7. Per defensionem summonitionis per Legem. 8. Per mortem Attornati si tenens in tempore non novit. 9. Si petens essoniatus sit. 10. Si placitum mittatur fine die. 11. Per Breve de Warrantia Diei. But sickness (as one holds) is no cause of saving a default, because it may be so artificially counterfeited, that it cannot be known.

Bracton, lib. 5. tract. 3. Fleta, lib. 6. cap. 7. 14. 3. *H.* 6. 46. 38. *E.* 3. 5. 31. *H.* 6. Barre 66. 12. *H* 4. 13. 50. *E.* 3. 9. 3. *H.* 4. 48. 2. *H* 4 8. 5. *H.* 7. 3. *F.N.B.* 17. Bract. lib. 4. fol. 367, 369. Glan. lib. 1. cap. 8. 28. *H* 6 11. 4. *H.* 5. Challenge 153. *Br. Saver. Def* 45.

¶ CAuxy q̃ un recoverie soit p̃ default vers tiel q̃ est en prison, il avoidera le judgment p̃ Briefe de Error, pur ceo que il fuit en prison al temps de le default fait, &c. Et pur ceo q̃ tiels matters de Record ne noyer̃ celuy que est ẽ prison, mes que ils serront reverses, &c. à multo fortiori, il semble que un matter en fait, s̃. tiel discent ewe quãt il fuit en prison ne luy noyera, &c. specialm̃t pur ceo que il ne puis̃t aler hors de prison pur faire Continual Claime, &c.

Also if a recovery be by default against such a one as is in prison, he shall avoid the judgment by a Writ of Error, because he was in prison at the time of the default made, &c. And for that such matters of Record shall not hurt him which is in prison, but that they shall be reversed, &c. *à multo fortiori*, it seemeth that a matter in fact, s. such discent had when he was in prison, shall not hurt him, &c. especially seeing he could not go out of prison, to make Continual Claim, &c.

¶ *Record.*

¶ *Record.* Recordum is a memorial or remembrance in Rolls of Parchment, of the proceedings and acts of a Court of Justice which hath power to hold plea according to the course of the Common Law, of real or mixt Actions, or of Actions quare vi & armis, or of personal actions, whereof the debt or damage amounts to forty shillings or above, which we call Courts of Record, and are created by Parliament, Letters Patents, or Prescription. Glanvil.lib.8 cap 8. Bracton,lib.3.fol.156. Britton in proœmio & cap. 27.

It is aptly derived of Recordari, which is to keep in memory or record, as it is said, Quòd dicere nihil aliud est quàm recordari; and in the same sense the Poet useth it, *Si rite audita recordor.* But legally records are restrained to the rolls of such only as are Courts of record, and not the rolls of inferiour, nor of any other Courts which proceed not secundum legem & consuetudinem Angliæ. And the rolls being the records or memorials of the Judges of the Courts of record, import in them such incontrollable credit and verity, as they admit no averment, plea, or proof to the contrary. And if such a record be alleaged, and it be pleaded, that there is no such record, it shall be tried only by it self: and the reason hereof is apparent, for otherwise (as our old Authors say, and that truly) there should never be any end of controversies, which should be inconvenient. Of Courts of record you may read in my Reports: but yet during the Term wherein any judicial act is done, the record remaineth in the breast of the Judges of the Court, and in their remembrance, and therefore the roll is alterable during that Term, as the Judges shall direct, but when that Term is past, then the record is in the roll, and admitteth no alteration, averment, or proof to the contrary. Cicero. Virgil. Pl.Com.79 b.Mich.7. & 8 Eliz.Dier 242. 17.E.3.49. 37.H.6. 21.b. 11.H.4.26.b. 21 H.6.24. Error Br. 73.7.H.7 4. 19 Ass.7.lib 4.fol.52. in Rawlins case. Glanvil.lib.8.cap. 8. Bracton,lib. 3.fol.156. Britton, cap.27. Lib.6.fol.11.Jentlemans case.& 30.45.Lib.7. fol.30.Lib.8.fol.60.b. & 67. a. 7.H.6.28.19.H.6.9.

If a Grant by Letters Patents under the great Seal be pleaded and shewed forth, the adverse party cannot plead Nul tiel Record, for that it appears to the Court, that there is such a Record: but inasmuch as it is in nature of a condeyance the party may deny the operation thereof, therefore he may plead Non concessit, and prove in evidence that the King had nothing in the thing granted, or the like, and so it was adjudged. But to return to Littleton: What then? Shall a man that is in prison be privileged from Suits or Outlawries? Nothing less, for if the Tenant or Defendant be in prison, he shall upon motion, by order of the Court, be brought to the Bar, and either answer according to law, or else the same being recorded, the law shall proceed against him, and he shall take no advantage of his imprisonment. 18.Eliz.Dier 353. 3.Mar.Dier 129. Pl.Com.232. Seignior Berkleys Case. 16.H 7 11.b. 22.H.8. record. Br. 65. 39.H 6.4. 3.Eliz Dier 187. Lib. 6. fol.15.Edens case.Mich. 31.& 32.Eliz Rot.365. In Banke le Roy, inter Eden,& Franklyn, & Browne. 7.H.6. 8.8.H.6.16. Vide Sect. 418.

¶ A multo fortiori. Here is an argument, A minori ad majus, and the force of our Authors argument is this, If a man in prison shall not be bound by a recovery by default for want of answer in Court of record in a real action, which is matter of record (the height and strength whereof hath been somewhat touched) à multo fortiori, a Discent in the Country, which is matter of deed, shall not for want of claim bind him that is in prison. And as the argument à minori ad majus, doth ever hold (as our author hath already told us) affirmatively, so the argument à majori ad minus doth ever hold negatively, as our author here teacheth us: and the reason hereof is this, Quod in minori valet, valebit in majori; & quod in majori non valet, nec valebit in minori.

¶ *Par ceo que il ne poit aler hors de prison, &c.* By this it appeareth, That a man in prison by process of law ought to be kept in salva & arcta custodia, and by the Law ought not to go out, though it be with a Keeper, and with the leave and sufferance of the Gaoler: but yet imprisonment must be, custodia, & non pœna; for, Carcer ad homines custodiendos, non ad puniendos dari debet.

Sect. 439.

¶ Et meisme le manner il semble, lou home est hors du Royalm, en service le Roy, pur besoigne del Royalme, uncore cest disseisine quant il est en service le Roy, & le disseisor mort seisie, le disseisee

IN the same manner it seemeth, where a man is out of the Realm in the Kings service, for the business of the Realm; if such a one be disseised when he is in service of the King, and the disseisor dieth,

¶ *Hors du Royalme,* (id est) extra Regnum; as much to say, as out of the power of the King of England, as of his Crown of England: for if a man be upon the Sea of England, he is within the Kingdom or Realm of England, and within the ligeance of the King of England, as of his Crown of England. And yet alum mate is out of the jurisdiction of the common 6.R.2.Protect.46. Vide Sect.198.410, 411.

Law,

Rot.Pat. { 8 H. .
9 H 3.
15 H 3.
Temps E.1.Avow y 192
Rot.vascon.22.E.1.m.8
Pat 23 E.1.1. pars Pat.
30.E 2.8.E.2Coron.399
Stant.pl.Coron.51.

Law, and within the jurisdiction of the Lord Admiral, whose jurisdiction is very ancient, & long before the reign of Edward the third, as some have supposed, as may appear by the laws of Oleron, (so called, for that they were made by King Richard the first when he was there) that there had been then an Admiral time out of mind, and by many other ancient records in the reigns of Henry the third, Edward the first, and Edward the second, is most manifest.

Vide Sect. 677.

See hereafter in another case, which Littleton put in his Chapter of Remitter, there he saith, Ouster le mere, beyond the sea. This great Officer in the Saxon Language is called, Aen mere al, (i. over all the sea, Præfectus maris, sive classis, archithalassus: & in ancient time the office of the Admiralty was called, Custodia marinæ Angliæ, or Maritimæ Angliæ.

3.R.3.Cont.Claime 13.
4.E.3.46.

And note Littleton saith not, Beyond the sea, or extra quatuor maria, for a man revera may be infra quatuor maria, and yet out of the Realm of England. But infra quatuor maria, or extra, is taken by construction to be within the Realm of England, or the Dominions of the same.

But here a question may be demanded, what if a man be out of the Realm, and a Recovery is had against him in a Præcipe by default, whether shall he avoid it in a Writ of Error, as well as he should do the Outlawry, or if he had been imprisoned at the time of the recovery by default? And it seemeth that he shall not avoid the recovery, for by that means a man might be infinitely delayed of his Freehold and Inheritance whereof the law hath so great a regard. And few or none go over, but it is either of their own free will, or by suit, for what cause soever, and he is not in that case without his ordinary remedy, either by his Writ of higher nature, or by a Quod ei deforceat. But Outlawry in a personal action shall be avoided in that case, quia de minimis non curat lex, and otherwise he should be without remedy. See Section 437. and note the diversity between that case of the imprisonment, and this of being beyond Sea. And Littleton putteth the case of imprisonment, and entereth the being beyond sea here: neither have I seen any Book to warrant, That he that is beyond sea shall in this case avoid the recovery by default.

Bract.lib.5.fol.436.

¶ *En service le Roy.* Bracton saweth, That the exception of being beyond sea is, quia fuit in servitio Domini Regis ultra mare, viz. apud talem locum, and that case is clear: but you shall hear the opinion of Bracton in the next Section, where he is not in the service of the King.

Sect. 440.

Bract.lib.5.fol.436.b. & 163.Brit fol.21.216,217
Flet.lib 6.cap.52,53.
13 H.4.Trial 6.9.H.4 3.
21.H.6.Error 27.
33.H.6.1.21.H.6.34.
26.H.8 cap.18.
5,&6.E.6.cap.11.

¶ Item, auters ont dit, q̃ a lcun soit hors du Royalm coment que il ne soit en service le Roy, a tiel

Also herewith the ancient Law of England is agreeable with Littleton, and the Law at this day. So again, Verus & constans opinio, Excusatur etiam quis quod alienum,

Also others have said, that if a man be out of the Realm, though he be not in the King's tiel

tiel home eſteant hors de le Royalme, eſt diſſeiſie en terres ou tenements deins le Royalme, & le diſſeiſour deby ſeiſie, &c. le diſſeiſee eſteant hors du Royalme, il ſemble a eux q̄ quant le diſſeiſee vient deins le Royalme, que il poit enter ſur lheire le diſſeiſor, & ceo ſemble a eux pur deux cauſes. An eſt, que celuy que eſt hors du Royalme ne poit aver conuſans del diſſeiſin fait a luy per entendement de ley, nient pluis que choſe fait hors du Royalm̄ poit eſtre try deins le Royalme per le ſerement de 12. & de compeller tiel home per la ley de faire continual claime, le quel per lentendement de le ley ne puit aver aſcun notice, ou conuſance de tiel diſſeiſin, ceo ſerra inconvenient, & noſmeſnt quant tiel diſſeiſin eſt fait a luy quant il eſt hors du Royalme, & auxy le mozant ſeiſie fuit quār il fuit hors du Royalm: car ē tiel caſe il ne poit per nul poſsibility ſolonque common preſumptiō faire continual claime. Wes auter-

Service, if ſuch a man being out of the Realm be diſſeiſed of Lands or Tenements within the Realm, and the Diſſeiſor die ſeiſed, &c. the Diſſeiſee being out of the Realm, it ſeemeth unto them, that when the Diſſeiſee cometh into the Realm, that he may well enter upon the heir of the Diſſeiſor, &c. and this ſeemeth unto them for two cauſes: One is, that he that is out of the Realm, cannot have knowledge of the Diſſeiſin made unto him by underſtanding of the Law, no more than that a thing done out of the Realm may be tryed within this Realm by the oath of 12 men, and to compel ſuch a man to make continual claim, which by the underſtanding of the Law can have no knowledge or Coniſance of ſuch Diſſeiſin made or done, this ſhall be inconvenient, namely, when ſuch a diſſeiſin is done unto him when he was out of the Realm, and alſo the dying ſeiſed was done when he was out of the Realm, for in ſuch caſe he may not

non appoſuerit. ut ſi toto tempore litigii fuit ultra mare quacunque occaſione. And this is alſo agreeable with our year Books.

¶ *Nient pluis que choſe fait hors del royalm poet eſte trie deins le royalm per le ſerement de* 12. And in this rule of law there is warily and truly put by Littleton, theſe words (by the oath of twelve men) meaning by a Jury. For by certificate a thing done beyond Sea may be tryed, as Littleton himſelf, Sect. 102. hath ſet down. And all matters done out of the Realm of England concerning War, combate, or deeds of arms, ſhall be tryed and termined before the Conſtable and Marſhal of England, before whom the tryal is by Witneſſes, or by combate, and their proceeding is according to the Civil law, and not by the oath of twelve men, as Littleton here ſpeaketh.

42. E. 3. 2. & 3. Vide Sect. 102.

1. H 4. cap. 14. 13. H. 4. f. 4. 43. E. 3 2. & 3.

This rule here rehearſed by Littleton, is worthy of explication. If an alien (for example borne in France) bring a real action, and the Tenant plead that the Demandant is an alien born under the obedience of the French King, and out of the ligeance of the King of England: ſhall this caſe want Tryal, becauſe the matter alledged is out of the realm? then by the fiction of this plea, no Demandant ſhall recover, therefore in this caſe, the Demandant ſhall reply, that he was born at ſuch a place in England, within the Kings ligeance, and hereupon a Jury of 12 ſhall be charged, and if they have ſufficient Evidence that he was born in France, or in any other place out of the Realm, then ſhall they find, that he was born out of the Kings allegeance, and if they have ſufficient evidence that he was born in England, or Ireland, or Jerſey, or Jerſey, or elſewhere within the Kings obe-

20. E. 3. averment. 34. 27. Aſſ. 24. 32. H. 6. 25. 15. E. 4. 15. 7. H. 6. 15. 1. R. 3. 4. 6. H. 7. 6. 7. H. 7. 8. F. N. B. 196. 29. Aſſ. 11. 13. E. 1. mord. 47. 12. H. 3. ib. 55. Lib. 7. fol. 26. 27. Calvins caſe. L. 6. f. 47. Dowdals caſe.

dience, they shall find that he was born within the Kings leigeance. And this hath ever been the pleading and manner of tryal in that case. And so it is in the case that Littleton here puteth, if a man in avoidance of a fine or a discent, alleage that he was out of this Realm in Spain, at the time of levying of the fine and at the time of the disseisin

mẽt serroit ũ tiel disseisẽ fuit deins le Royalme al temps dẽ le disseisin, ou al temps del mozant del disseisour.

by possibility after the common presumption make continual claim: But otherwise it should be if the Disseisee were within the Realm at the time of the Disseisin, or at the time of the dying seised of the Disseisor.

& discent, the adverse party may alleage that he was at such a place in England, &c. whereupon issue shall be taken, & then in evidence he may prove that he was out of the Realm, &c. which upon sufficient evidence the Jury ought to find. And in both these cases & the like, in a special verdict the Jury may find that he was born beyond Sea, or was beyond Sea at that time, &c.

The Statute of 25. E. 3. De proditionibus doth declare, that it is Treason by the Common Law to adhere to the enemies of the King within the Realm, or without, if he be thereof probeablement attaint of overtfact, and that he shall forfeit all his lands, &c. A man must not imagine that seeing by the common law declared by Authority of Parliament, that adhering to the Kings enemies without the Realm is high Treason, and that the Delinquent may be attainted thereof, &c. that this should want trial, for then the judgment of the Common Law, and declaration of the Parliament should be illusory, which no well-advised man will think in a matter of so great consequence. But certain it is, that for necessity sake the adherency without the Realm must be alledged in some place within England. And if upon evidence they shall find any adherency out of the Realm, they shall find the Delinquent guilty. But most commonly they indited him (if he had lands) in some county where his lands did lie, that were to be forfeited, and this as appeareth in our books was the Common use. And so it is declared by the Statute (*) of 35. H. 8. and that it shall be tried by twelve men of the county, where the Kings Bench shall sit, and be determined before the Justices of that Bench, or else before such Commissioners, and in such shire of the Realm, as shall be assigned by the Kings Majesties Commission, and this Statute for this point remains in force at this day, and so it was resolved (a) by all the Judges in my time, viz. in 33. Eliz. in the case of Orurke. And Anno (b) 34. Eliz. in Sir John Perots case done in Ireland, for that is out of the Realm of England, and the case (c) in Mich. 19. & 20. Eliz. was utterly denied, and Sir Christopher Wray himself, who is supposed to give his opinion in that case) protested that he never gave any such opinion, but did hold the contrary. When part of the Act, especially the original is done in England, and part out of the Realm, that part that is to be performed out of the Realm, if issue be taken thereupon, shall be tried here by 12 men, and those 12 men shall come out of the place where the Writ is brought. For example (which ever doth illustrate) it was covenanted by Indenture, by Charter party, that a Ship should sayl from Blackney Haven in Norfolk, to Muttrel in Spain, and there remain by certain days.

5. R. 2. trial. 54.

(*) 35. H. 8. cap. 2. Staunford. pl. cor. 90.

(a) 33. El. case Orurke.
(b) 34. Eliz. case de Sir John Perots.
(c) Mich. 19. & 20. Eliz. Dier. 360.

48. E. 3. 3. 11. H. 7. 16. 1. R. 3. 4.

In an Action of covenant brought upon this Charter party, the Indenture was alleged to be made at Thetford in the County of Norfolk, and upon pleading the Issue was joyned, whether the said Ship remained at Muttrel in Spain by the said certain days. And it was adjudged that this issue should be tried at Thetford where the action was brought, because there the contract took his original by making of the Charter party, and so it hath been often adjudged in such like case.

Pasc. 28. Eliz. in Action de covenant inter Evangelist Constantine Pl. & Hughgyn defendant in the Kings Bench.

Li. 6. f. 47. Dowdals case.

An obligation made beyond the Seas, may be sued here in England, in what place the plaintiff will: What then if it bear date at Burdeaux in France? where shall it be sued? The answer is made, that it may be alledged to be made In quodam loco vocat. Burdeaux in France, in Islington in the County of Middlesex, and there it shall be tried, for whether there be such a place in Islington or no, is not Traversable in that case. These points are necessary to be known in respect of the variety of opinions in our books. And of these thus much shall suffice, and now is Littleton worthy to be heard.

Vide 32. H. 6. 25. 48. E. 3. 3. 11. H. 7. 16. 2. E. 2. obligation 15.

Entendement de le ley.

¶ *Per entendement de le ley.* Vide, for intendment of Law, Sect. 99. 100. 116. 293. 377. 393. 406. 367. 462. 463. &c. 439.

Vide Sect. 269.

¶ *Ceo serr' inconvenient.* Here also, as hath been often said, appeareth, that argumentum ab inconvenienti, is strong in Law.

¶ *Auterment est si le disseisee suit deins le royalme al temps del disseisin, &c.* So as if a man be disseised before he goeth over Sea, or cometh into the Realm again before the Discent, the Discent shall take away his entry.

Sect.

Sect. 441.

'UN auter matter ils allegeont pur prober que devant leſtatute fait en le temps de Roy E. 3. An. 34. cap. 16. de ſon raigne, per quel eſtatute non-claime eſt oulle, &c. la ley ſuit tiel, que ſi un fine ſoit leby de certaine terres ou tenements, ſi aſcun que ſuit eſtrange al fine avoit droit daver & recobera meſmes les terres ou tenements, ſil ne benuſt & ſil ſon claime a ceo deins lan & le jour prochein apres le fine lebie, il ſerra barre a touts jours, Quia dicebat', finis finem litib' imponebat. Et que la ley ſuit tiel, il eſt prove per leſtatute de Weſtminſter 2. De donis conditionalibus, lou il eſt parl' que ſi fine ſoit lebie de les tenements en taile, &c. Quod finis ipſo jure ſit nullus, nec habeant hæred', aut illi ad quos ſpect' reverſio (licet fuerint plenæ ætat', in Anglia, & extra priſonam) neceſſitat' apponere clameum ſuum, &c. Iſſint ceo

AN other matter they alleage for a proof, that before the Statute of King *Edward* the Third, made the 34. year of his Reigne, by which ſtatute Non-claim is ouſted, &c. the Law was ſuch, that if a fine were levied of certain Lands or Tenements, if any that was a ſtranger to the fine had right to have and to recover the ſame Lands or Tenements, if he came not, and made his claim thereof within a year and a day next after the fine levied, he ſhall be barred for ever, *Quia dicebatur quod finis finem litibus imponebat.* And that Law was ſuch, it is proved by the Statute of Weſt. the 2. *De donis conditionalibus*, where it is ſpoken if the fine be levied of Tenements given in the tail, &c. *Quod finis ipſo jure ſit nullus, nec habeant hæredes, aut illi ad quos ſpectat reverſio (licet plenæ ætatis fuerint, in Anglia, & extra priſonam) neceſſitat' apponere clameum ſuum.* So it is

HEre it appeareth what the Common Law was before the ſaid Statute for Non-claim upon a fine levied. But now ſince Littleton wrote, by the Statute of 4. H. 7. five years after Proclamations made upon the fine are given to him that right hath to make his Claim, or purſue his Action, where the Common Law gave him but a year and a day. But this Statutes of 4. H. 7. extends only to fines and not to Non-claim upon a Judgment in a Writ of right, and therefore the ſaid Statute of 34. E. 3. here cited by Littleton which ouſteth Non-claim only to fines levied, extendeth not to a judgment in a writ of right at this day, and therefore the Common Law in that caſe remaineth to this day, viz. that claim muſt be made within a year and a day after judgment. Alſo if a fine be levied without Proclamations, or without ſo many as the law requireth, then the Statute of Non-claim doth extend to ſuch a fine. 34. E. 3. 16. 4. H 7 cap. 24. See as well this Statute, as the Statute of 32. H. 8. cap. 36. well expounded in my Reports. Lib. 1. fol. 44, 45. &c. caſe del fines per totum. l. 1. fol. 96, 97. in Shelleyes caſe. lib. 2. fol 93. Bingham's caſe. lib. 8. fol. 100. Lechfords caſe. li. 9. fo. 139, 140, 141. Beaumonds caſe. l. 10. f. 49. b. Lampots caſe & 99 a. li. 9 fol. 105, 106. Margaret Podgers caſe. lib. 5. fol. 124. Saffyns caſe. lib. 10. 96, 97. Seymors caſe. lib. 8 fol. 72. Greſleys caſe lib. 11. fol. 69. 71. 78. Pl. Com. in Smith & Stapl. caſe, & in Stowes caſe, & Howels caſe, & Glanvil. l. 13. c. 11. Bract. 435. Fleta, lib. 6. cap. 53. Brit. 216.

¶ *Dicebatur finis, quia finem litibus imponebat.* Here you may obſerve the Etymologie of a fine. And herewith agreeth (a) Antiquity, Finis ideo dicitur finalis concordia, quia imponit finem litibus. And after the example (b) of Littleton it is good to ſearch out the Etymologie or right derivation of words, for ignoratis terminis ignoratur & ars, as hath been often obſerved in other places. And the Civilians call this judicial concord, Tranſactionem judicialem de re immobili. (a) Glanvil. li. 8. cap. 3. Bract. lib. 5. fol. 435. Fleta, lib. 6. cap. 52, 53. (b) Etymologies, &c. Vide Sect. 74. 174. 194. 411. 520. 592.

¶ *Licet*

¶ *Licet fuerit plenæ ætatis, in Anglia, & extra prisonam.* In this Act of 13. E. 1. De donis conditionalibus is one omitted, who is added in the Statute De modo levandi fines, viz. & sanæ memoriæ. (c) But a Feme-Covert had no privilege of non-claim at the Common Law as some have said, because she had a husband that might make claim for her. But yet Bracton saith; Item excusatur uxor quæ sub potestate viri supposita quod clameum non apposuerit licet mittere possit. And citeth a judgment in the point. Trin. 4. H. 3. in Cusins case. But Fleta saith, Excusatur si fuerit uxor alicujus, si fuerit per virum impedita, quod non potuit apponere clameum. Also they in reversion or remainder expectant upon any estate of Freehold were barred by the Common Law, & yet they could make no claim, because as hath been said, it belonged to the particular tenant, and not to them, because their entry was not lawful; which was one of the principal causes of making of the said Statute of 34. E. 3. which ouited Non-claim. But these cases of Coverture, and of them in reversion and remainder, are now without question holpen, and just provision made for the saving of their rights and titles, by the said Statute of 4. H. 7. as by the said act appeareth.

Stat. de anno 18. E. 1.

(c) Pl. Com. Stowels case, 359.

Bracton, lib. 5. fo. 436. Britton, fo. 216. b. Fleta, lib. 6. ca. 53.

si home que avoit droit a les tenements, ſi fuit hors de Royalme al temps del fine levie, &c. nul damage, coment q̄ il ne fit son claime, &c. coment que tiel fine fuit matter de record. Per greinder reason il semble a eux que un disseisin & discent q̄ est matter en fait, ne ilunt trope greever celuy q̄ fuit disseisie, quant il fuit hors du Royalme al temps de disseisin, et auxy al temps que le disseisor morust seisie, &c. mes que il bien poit enter, nient contrestеant tiel discent.

proved, that if a stranger that hath right unto the tenements, if he were out of the Realm at the time of the fine levied, &c. shal have no damage, though that he made not his claim, &c. though that such fine was matter of record: by greater reason it seemeth unto them that a disseisin & discent that is matter in deed shall not so grieve him that was disseised when he was out of the Realm at the time of that disseisin, and also at the time that the disseisor died seised, &c. but that he may well enter notwithstanding such discent.

Sect. 442.

¶ *Arraigne un assise.* To arraign the assise is to cause the Tenant to be called to make the plaint, and to set the cause in such order as the Tenant may be inforced to answer thereunto; and is derived of the French word Arraigner, which signifieth to order or set in right place. An arraignment is sometime called an Astitution of the Verb Astituo compounded of Ad and Statuo, that is to place, or set in order one by another. In the same sense that Littleton here useth it, it is used when an appeal is

¶ Item, Quære ſi home ſoit disseisi, tiel arraigne un Assise envers le disseisor, et les recognitors de le assise chaūta pur le plaintife, et les Justices dassise poyle estre advises de lour judgment, tanq̄ al prochein assise, &c. Et en le dementiers le disseisor morust seisie, &c. ſi le dit suit

Also inquire if a man be disseised, and he arraign an assise against the disseisor, and the recognitors of the assise chaunte for the plaintif, and the Justices of assise will be advised of their judgments until the next assise, &c. and in the mean season the disseisor dieth seised, &c. yet the

del

del aſſiſe ſerra pris en ley pur le dit diſſeiſee un continual claime, entant que nul default fuit en luy, &c.

ſaid ſuit of the aſſiſe ſhall be taken in Law for the diſſeiſee a continual claim, inſomuch that no default was in him, &c.

arraigned, both which are arraigned in French, but entred in Latine. And it is to be obſerved that Littleton ſaith here Arraigne in aſſiſe, and ſaith not thus the Tenant is arraigned, and ſo of the appeal, for theſe are the ſuits of the ſubject, and no man is ſaid to be arraigned, but merely at the ſuit of the King, upon an Enditement found againſt him, or other record wherewith he is charged. And there the arraignment of the priſoner is, to take over, that he appear, and for the certainty of the perſon, to hold up his hand: and to pleade ſufficient plea to the enditement or other record, whereupon they which follow for the King may orderly proceed.

Mic. & 3.E.6.c 21. Edwards the end. Stanf. pl. cor. 125. c. 3. H. 7. ca. 1.

¶ *Juſtices daſſiſe.* Juſtices of Aſſiſe are aſſigned and conſtituted by the King, of the Judges and Sages of the Law, and are called Juſtices of Aſſiſe, for that the writs of aſſiſe of Novel diſſeiſin, (which in former times were accounted Pleas ſcrelles, and very frequent and common) were returnable before them to be taken in their proper Counties twice every year at the leaſt, whereupon they had authority to give judgment and award iſſue and execution: and therefore both for the number of them in times paſt, and for the greater authority they had then as Juſtices of Niſi prius (which was to try iſſues only, except in Quare impedit and Aſſiſes de darreine preſentment, in which caſes the Juſtices of Niſi prius might give judgment) they were denominated Juſtices of Aſſiſes. And divers Acts of Parliament have given to them great authority both in criminal cauſes and Common-pleas. Theſe Juſtices of Aſſiſe have alſo Commiſſions of Oier and Terminer, of Gaol deliverie, and of the peace, of aſſociation, and Si non omnes throughout their whole circuits, ſo as they are armed with ample, provident, but yet ordinary juriſdiction; for all theſe Commiſſions are bounded with this expreſs limitation, Facturi quod ad juſtitiam pertinet ſecundum legem & conſuetudinem Angliæ. And in former time according to the original inſtitution and their Commiſſion, both the Juſtices joyned both in Common-pleas, and pleas of the Crown.

Vid. Sect. 514. 233, 234. Magna Charta, 30. W. 2. ca. 30. 39. Stat. de Ebor. ca. 3. 4. Artic. Sup. Cart. ca. 10. 4. E. 3. ca. 11. 7. R. 2. ca. 7. 27. E. 1. De finibus ca. 4. 28. E. 1. de appellatis. 4. E. 3. ca. 2. 2. H. 5. ca. 8. 3. H. 5. ca. 7. 13. H. 4. c. 7. North. 2. E. 3. ca. 3. 2. E. 3. ca. 5. 14. H. 6. c. 1. 21. H. 6. c. 10. 3. H. 7. c. 1. 33. H. 8. c. 9. 34, & 35. H. 8. c. 14. 2, & 3. E. 6. ca. 24. 1. E. 6. ca. 7. 2. Mar. Dier. 97. 3, & 4. Eliz. Dier. 205.

¶ *Si le dit ſuit del aſſiſe, ſerra priſe en ley, &c. un continual claime.* And it is holden at this day that it ſhall amount to a Claim, that there was no default in him as Littleton ſaith. (d) Some have object that if the bringing of an Aſſiſe ſhould amount to continual claim, and every continual claim made by the Diſſeiſee veſt the poſſeſſion and freehold in him, therefore if bringing the Aſſiſe, &c. ſhould amount to a continual claim, that then the Writ ſhould abate. But hereunto it hath been anſwered in this Chapter, that a continual claim is an entry by conſtruction of Law for the advantage of the Diſſeiſee, but not for his diſadvantage.

(d) See before in this chapter Sect. 419. Vid. Sect. 416.

In a Writ of entry Sur Diſſeiſin againſt one, ſuppoſing that he had not entred but by S. who diſſeiſed him, the Tenant ſaid that S. diſſeiſed, and the land deſcended to him, and prayed his age; the Plaintif counterpleaded his age, for that he arraigned an Aſſiſe againſt S. who died hanging the Aſſiſe, and he was ouſted of his age, for that the bringing of the Aſſiſe amounts to a claim.

24. E. 3. 25. 9. E. 2. age. 141. 15. E. 3. counterplea de gar. 5.

If Tenant in Dower alien in fee with warranty, and the heir in the reverſion bring a Writ of entry In caſu proviſo, &c. and hanging the plea the Tenant dieth, the heir ſhall not be rebutted or barred by this warranty, for that the Præcipe did amount to a continual claim. And herewith agreeth (a) antiquity; Et ſi clameum non apposuerit, ſufficit tamen ſi ille vel anteceſſor ſuus faciat quod tantundem valeat, ut ſi placitum moverit tenentem vel fecerit rem litigiosam; quia ſicut plus eſt facto appellare, quam verbo, ita plus eſt clameum apponere facto, quam verbo. Et ad hoc facit de termino Sanctæ Trinitatis, Anno regni Regis H. 3. 15. in com. Hunt. de quadam Guldeburga, cui objectum fuit, quod clameum non apposuit, & ipſa reſpondit, quod fecit, quod tantundem valet, quia tempore finis facti implacitavit tenentem per aliud breve, &c.

3. E. 3. tit. garrantie 62. (a) Fleta, lib. 6. ca. 52. Bract. lib. 5. fo. 436.

If the goods of a Villein (before any ſeiſure made by the Lord) be diſtrained, the Lord may have a Replevin, and notwithſtanding before the bringing of the Writ he hath no property, yet the very bringing of the Writ doth amount to a claim of the goods, and veſteth the property in the Lord.

33. E. 3. Replevin. 43. 42. E. 3. 18. b. 9. H. 6. 25.

¶ *Entant que nul default fuit en luy, &c.* Hereby it is implyed, that our Author inclined to this opinion, that it ſhould amount to a claim, for that no default was in him, Et nemo debet rem ſuam ſine facto aut defectu ſuo amittere, as the rule is.

Sect.

Sect. 443.

¶ HEre first it is to be observed, that albeit the Freehold and inheritance is in this case in no person, but in abeyance or in consideration of Law, yet an entry and claim by one that hath no right shall gain the inheritance by wrong. For here Littleton saith, & of such estate died seised, &c. And so it is in case of a Bishop, Parson, Vicar, Prebend, or any other sole Corporation. And in the statute of Merlebridge it is called an Intrusion.

Merleb. cap. 28.

Secondly, that seeing by the death of the Abbot (which is the act of God) no person is able to make continual claim, therefore a Disseent during that time shall not prejudice the successor, for as hath been said, Impotentia excusat legem. If an usurpation be had to a Church in time of vacation, this shall not prejudice the Successor, to put him out of possession, but that at the next avoidance he shall present.

F.N.B. 34, W. 2. cap. 5.

¶ *Nient pluis que, ils sont able de suer Action, &c.* Here that which hath in this Chapter been said is confirmed, viz. That the Entry or Continual Claim must pursue the action.

¶ *Car le Covent nest forsque un mort person, &c.* This is Ratio una, but not unica: for though the rest of the Corporation be no more persons, as the Chapter in case of Dean and Chapter, or the Commonalty in case of Maior and Commonalty; yet cannot they when there is no Dean or Maior make claim, because they have neither ability nor capacity to take or to sue any action, as our Author here saith.

¶ *Car en temps de* ¶ Item, Quære si un Abbe de un Monasterie morust, & durant le temps de vacation, un hõe tortiously enter en certaine parcel de terre del Monastery, claymant la terre a luy & a ses heires, & de tiel estate morust seisie, & la terre discendist a son heir, & puis apres un est elect et fait Abbe de meisme la Monasterie, si meisn Labbe pott enter sur le heire ou nemy. Et il semble a ascuns que Labbe bien pott enter en ceo cas, pur ceo q le Covent en temps de vacat ne fuit ascun person able de faire Continual Claime, car nient pluis que ils sont personabl' d suer Action, nient pluis ils sont able de faire Continual Claime, car le Covent nest forsque un mort corps sans Teste, car en temps de Vacation un graunt fait a eux, ou per eux est void, & en cest case Labbe ne pott aver Briefe Dentre sur Disseisin enders

Also inquire if an Abbot of a Monastery die, & during the time of vacation, a man wrongfully entreth in certain parcels of land of the Monastery, claiming the land unto him and his heirs, and of that estate dieth seised, and the Land discendeth unto his heirs, and after that an Abbot is chosen, and made Abbot of the Monastery, a question is, if the Abbot may enter upon the heir or not. And it seemeth to some, That the Abbot may well enter in this case, for this that the Covent in time of vacation was no person able to make continual claim, for no more than they be personable to sue an Action, no more be they able to make Continual Claim, for the Covent is but a dead bodie without Head, for in time of vacation a Grant made unto them is void, and in this case an Abbot may not have a Writ of *Entry* upon *Disseisin*, against the Heir, for le

le heire, pur ceo que il ne fuit unques diſſeiſe, & ſi Labbe ne puiſſe enter en ceo caſe, donques il ſerra mis a ſon Briefe de Droit, &c. le quel ſerra trop dure pur le meaſon, per que ſemble a eux, que Labbe bien poit enter, &c.

this, That he was never diſſeiſed. And if the Abbot may not enter in this caſe, then he ſhall be put unto his Writ of Right, &c. which ſhall be hard for the Houſe. By which it ſeemeth to them, that the Abbot may well enter, &c.

Quæras de dubiis, legem bene diſcere ſi vis: Quærere dat ſapere, quæ ſunt legitima vere

Quæras de dubiis, legem bene diſcere ſi vis: Quærere dat ſapere quæ ſunt legitima vere.

vacation un Graunt fait a eux ou per eux, eſt void, &c. And the reaſon is, becauſe the body politick, which is capable, is not complete, but wanteth the Head. But this is to be underſtood of an immediate Grant, for if during the vacation of the Abathy of Dale, a Leaſe for life, or a gift in Tail be made, the remainder to the Abbot of Dale and his Succeſſors, this remainder is good, if there be an Abbot made during the particular eſtate.

2. H. 7. 13, 40. Aſſ. 26. 34. E. 3. Garrantie 69.

If there be Maior and Commonalty of D. and the Maior dieth, a Grant made to the Maior and Commonalty of D. is void for the cauſe aforeſaid, but in that caſe if a Leaſe for life be made, the remainder to the Maior and Commonalty of D. the remainder is good, if there be a Maior elected during the particular eſtate.

¶ *Poit enter, &c.* Here by this (&c.) is implyed, Or make his Continual Claim in ſuch ſort as hath been before expreſſed.

¶ Quæras de dubiis, Legem bene diſcere ſi vis:
Quærere dat ſapere quæ ſunt legitima vere.

Here Littleton expreſſeth an excellent means to attain to the reaſon of the Law, by enquiring of, and conference had with learned men, of doubtful caſes:

Inter cuncta leges, & percunctabere Doctos. Horace.

For as Collatio peperit artes, ſo Collatio perficit artes: And this muſt be continual, for as knowledge increaſeth, ſo doubts therewith increaſe alſo; Creſcente ſcientia, creſcunt ſimul & dubitationes.

And here Littleton citeth very aptly two Verſes, for it is truly ſaid, That Authoritates Philoſophorum, Medicorum & Poetarum ſunt in cauſis allegandæ & tenendæ: And our Author doth cite a verſe for memory, but it is worthy of memory.

CHAP. 8. Of Releaſes. *Sect.* 444.

¶ Releaſes ſont de divers mãners, ceſtaſavoir, Releaſes de tout le droit q̃ home ad en terres ou Tenements, & Releaſes de Actions perſonals & reals, & au-

Releaſes are in divers manners, *viz.* Releaſes of all the right which a man hath in Lands or Tenements, and Releaſes of Actions perſonals and reals, and other things.

¶ Here our Author begineth with a diviſion of Releaſes.

Vide Mir. c. 2. Sect. 17. Vide Brit. 101. Bract. li. 5 Tract. de Except. & Lib. 4. fol. 318. b. Fleta, lib. cap. 14.

Theſe words muſt be referred thus: Releaſes are of two ſorts, viz. A releaſe of all the right which a man hath either in Lands or Tenements, or in Goods and Chattels: or there is a Releaſe of Actions Real, or in lands or tenements: or Perſonal,

Vide Sect. 492.

ſonal, of or in goods or chattels: or mixt, partly in the reality, and partly in the Perſonalty.

¶ *Releaſe.* Relaxatio: Of the Etymology of this word you have heard before. Fleta (a) calleth it, Charta de quieta clamantia.

(a) Fleta, ubi ſup.

¶ Noverint univerſi per præſentes, &c. Here Littleton ſheweth Preſidents of Releaſes of right: and Preſidents do both teach and illuſtrate, & therefore our Student is to be well ſtored with Preſidents of all kinds.

Brack. lib. 4. fol. 308. Fleta, ubi ſup. 9. H. 6. 35. 24. E. 3. 27. 13. H. 4. Entr. congeab. 57.

¶ Remiſiſſe, relaxaſſe, & quietum clamaſſe. Here Littleton ſheweth, That there be three proper words of Releaſe, and be much of one effect: beſides, there is Renunciare, Acquietare, and there be many other words of releaſe, as if the leſſor grants to the leſſee for life, That he ſhall be diſcharged of the Rent, this is a good releaſe, Vid. Sect. 532.

And it is to be underſtood, That there be releaſes in Deed, or expreſs releaſes, whereof Littleton here hath ſhewed an example. Theſe Expreſs releaſes muſt of neceſſity be by Deed. There be alſo releaſes in Law, and they are ſometime by Deed, and ſometime without Deed. As if the Lord diſſeiſe the tenant, and maketh a Feoffment in Fee by Deed or without Deed, this is a releaſe of the Seigniory. And ſo it is, if the Diſſeiſee diſſeiſe the heir of the Diſſeiſor, and make a Feoffment in Fee by Deed or without Deed, this is a Releaſe in Law of the right. And the ſame Law it is of a right in Action.

27. H. 8. 29. of an uſe. 34. H. 6. 44. of anattaint. 3. E. 3. 28. 21. E. 4. 81. Pl. Com. Delameres caſe.

8 E. 4. 3. 21. E. 4. 2.

If the Obligee make the Obligor his Executor, this is a releaſe in law of the action, but the duty remains, for the which the Executor may retain ſo much goods of the Teſtator.

11. H. 7. 4. 20. H. 7. 29. 8. E. 4. 3.

If the Feme Obligee take the Obligor to Husband, this is a releaſe in law. The like law is, if there be two Femes Obligees, and the one take the Debtor to Husband.

If an Infant of the Age of ſeventeen years releaſe a Debt, this is void. But if an Infant make the Debtor his Executor, this is a good releaſe in law of the action.

But if a Feme Executrix take the Debtor to Husband, this is no releaſe in law, for that ſhould be a wrong to the Dead, and in law work a Devaſtavit, which an Act in law ſhall never work. And ſo it was adjudged in the Kings Bench, Mich. 30. & 31. Eliz. in which caſe I was of Counſel.

30. E. 3. 24. 32. E. 3. Tit. Scire fac. 102.

But it is to be obſerved, That there is a diverſity between a releaſe in Deed, and a releaſe in law: for if the heir of the Diſſeiſor make a leaſe for life, and the Diſſeiſee releaſe his right to the leſſee for his life, his right is gone for ever. But if the Diſſeiſee doth diſſeiſe the heir of the Diſſeiſor, and make a leaſe for life, by this releaſe, in law the right is releaſed but during the life of the leſſee: for a releaſe in law ſhall be expounded more favourable, according to the intent and meaning of the parties, than a releaſe in Deed, which is the act of the party and ſhall

ters choſes. Releaſes de tout le droit que homes ont en Terres ou Tenements, &c. ſont communément fait en tiel form ou d tiel effect.

Releaſes of all the right which men have in Lands and Tenements, &c. are commonly made in this form, or of this effect.

Sect. 445.

¶ Noverint univerſi per præſentes me A. de B. remiſiſſe, relaxaſſe, & omninò de me & hæredibus meis quietum clamaſſe: *vel ſic*, Pro me & hæredibus meis quietum clamaſſe C. de D. totum jus, titulum, & clameum quæ habui, habeo, vel quoviſmodo in futur. habere potero, de & in uno meſſuagio cum pertinentiis in F. &c. Et eſt aſcaboire, que ceux Verbs, Remiſiſſe, & quietum clamaſſe ſont de un tiel effect, ſicome tiels Verbs, Relaxaſſe.

Know all men by theſe Preſents, That I A. of B. have remiſed, releaſed, and altogether from me and my Heirs quiet claimed: or thus, *For me and my Heirs quiet claimed to C. of D. all the right, title, and claim which I have, or by any means may have of and in one meſſuage, with the appurtenances in F. &c.* And it is to be underſtood, that theſe words, *Remiſiſſe, &c. quietum clamaſſe*, are of the ſame effect as theſe words, *Relaxaſſe.*

ſhall be taken moſt ſtrongly againſt himſelf, and ſo in the caſe aforeſaid, where the Debtor is made Executor.

¶ Totum jus, titulum, & clameum. But note, that Jus or right in general ſignification includeth not only a right for the which a Writ of right doth lye, but alſo any title or claim either by force of a Condition, Mortmain, or the like, for the which no action is given by law, but only an entry.

Sect. 446.

¶ Item, ceux parolx q̄ ſont communement mis en tielx faits de releales, ſ̄, (quæ quoviſmodo in futurum habere potero) ſont ſicome voides en le ley, car nul droit paſſa per un releas, forſque le droit que le releſſor ad al temps de le releas fait. Car ſi ſoit pier & fits, & le pier ſoit diſſeiſie, & le fits (vivant ſon pier) releſſa per ſon fait a le diſſeiſor, tout le droit que il ad, ou aver puiſſit, en meſmes les tenements ſans clauſe de garranty, &c. et puis le pier mozuſt, &c. le fits poit loyalment enter ſur la poſſeſſion le diſſeiſor, pur ceo que il navoit droit en la terre en la vie ſon pier, mes le droit diſcendiſt a luy per diſcent apres le releas fait, p̄ le mort ſon pere, &c.

ALſo theſe words which are commonly put in ſuch Releaſes, ſ. (*quæ quoviſmodo in futurum habere potero*) are as void in Law, for no right paſſeth by a Releaſe, but the right which the Releaſor hath at the time of the Releaſe made. For if there be Father and Son, and the Father be diſſeiſed, and the Son, (living his Father) releaſeth by his deed to the diſſeiſor all the right which he hath or may have in the ſame tenements without clauſe of warranty, &c. and after the Father dieth, &c. the Son may lawfully enter upon the poſſeſſion of the Diſſeiſor, for that he had no right in the land in his fathers life, but the right deſcended to him after the Releaſe made by the death of his Father, &c.

¶ NOte, a man may have a preſent right, though it cannot take effect in poſſeſſion, but in futuro.

As he that hath a right to a reverſion or remainder, and ſuch a right he that hath it, may preſently releaſe: But here in the caſe which Littleton puts where the Son releaſe in the life of his Father, this releaſe is void (a) becauſe he hath no right at all at the time of the releaſe made, but all the right was at that time in the Father, but after the deceaſe of the Father, the Son ſhall enter into the land againſt his own Releaſe.

(a) Britton fol. 101. 17.E.3.67. 42.E.2.21. 10.H.6.4.20.Aſſ.7. 27.E.3. execution 130.

The Baron makes a Leaſe for life and dieth, the Releaſe made by the Wife of her Dower to him in reverſion is good, albeit ſhe hath no cauſe of Action againſt him in præſenti.

16.E.3. bar 245. Hoes caſe 5.part. f. 70. 71.

¶ *Sans clauſe de garranty.* For if there be a warranty annexed to the releaſe, then the Son ſhall be barred. For albeit the releaſe cannot bar the right for the cauſe aforeſaid, yet the warranty may rebutt, and bar him, and his Heirs of a future right which was not in him at that time: and the reaſon (which in all caſes is to be ſought out) wherefore a warranty being a Covenant real ſhould bar a future right, is for avoiding of circuity of action (which is not favoured in law) as he that made the warranty ſhould recover the land againſt the Tenant, and he by force of the warranty to have as much in value againſt the ſame perſon: yet is there a diverſity between a warranty and a Feoffment, (b) for if there be Grandfather, Father, and Son, and the Father diſſeiſeth the Grandfather, and make a feoffment in

20.H.6.29.

(b) 39.H.6.43.21.E.4.81 15.E.4.tit.entr.cong.21 9.H.7.1.b.2. E.3.38.

10.E.2.confirmation.24 8.E.2.garr. 62. 11.H.4. 33.
43.E.3.17. 42.E. 3.24. per Finchden. 17.E.3.67
Lib.1. fol.112. 113. in Albanies caſe.

in fee, the Grandfather dieth, the Father againſt his own feoffment ſhall not enter, but if he die, his ſon ſhall enter, and ſo note a diverſity between a Releaſe, a Feoffment, and a Warranty: a releaſe in that caſe is void; a Feoffment is good againſt the Feoffor, but not againſt his heir; a warranty is good both againſt himſelf and his heirs.

And here are three diverſities worthy of obſervation, viz. Firſt, between a Power or an Authority, and a Right. Secondly, between Powers and Authorities themſelves. Thirdly, between a Right and a Poſſibility.

As to the firſt, if a Man by his laſt Will deviſeth that his Executors ſhall ſell his land, and dieth, if the Executors releaſe all their right and title in the land to the heir, this is void, for that they have neither right nor title to the land, but only a bare Authority, which is not within Littletons caſe of a releaſe of a right. And ſo it is if ceſty que uſe had deviſed that his feoffees ſhould have ſold the land. Albeit they had made a feoffment over, yet might they ſell the uſe, for their Authority in that caſe is not given away by the Livery.

15.H.7.11.

As to the ſecond, there is a diverſity between ſuch Powers or Authorities as are only to the uſe of a ſtranger, and nothing for the benefit of him that made the releaſe (as in the caſe before) and a Power or Authority which reſpecteth the benefit of the Releaſor, as in theſe uſual powers of revocation, when the feoffor, &c. hath a power to alter, change, determine, or revoke the uſes (being intended for his benefit) he may releaſe, where the eſtates before were defeaſible, he may by his releaſe make them abſolute, and ſeclude himſelf from any alteration or revocation, as it hath been reſolved, which diverſity you may read in (m) Albanies caſe.

(m) Lib. 1. Albanies caſe, ubi ſupra.

As to the third, before Judgment the Plaintiff in an Action of debt releaſeth to the bail in the Kings Bench all demands, and after Judgment is given, this ſhall not bar the Plaintiff to have Execution againſt the bail, becauſe at the time of the releaſe he had but a meer poſſibility, and neither Jus in re, nor Jus ad rem, but the duty is to commence after upon a contingent, and therefore could not be releaſed preſently. So if the Conuſee of a Statute, &c. releaſe to the Conuſor all his right in the land, yet afterwards he may ſue execution, for he hath no right in the land till Execution, but only a poſſibility, and ſo have I known it adjudged.

Lib 5. Hoes caſe 70 71. 10.H.6.4.
25 Aſſ.p.7. 27.E.3 execution 130. Paſch.38. Eliz. Rot 521. inter Borough & Gray.

Sect. 447.

49.E.3.28.

DE *tout le droit*, This muſt be intended of a bare right, and not of a releaſe of right, whereby any eſtate paſſeth, as to a Leſſee for years, &c. as ſhall be ſaid hereafter. Alſo it muſt be intended of a Releaſe of a right of Free-hold at the leaſt, and not to a right for any term for years or chattel real, as if the leſſee for years be ouſted, and he in the reverſion diſſeiſed, and the Diſſeiſor maketh a Leaſe for years, the firſt leſſee may releaſe unto him. All which is implyed in the firſt, &c. Alſo in ſome caſe a releaſe of a right made to one that hath neither free-hold in Deed, nor free-hold in Law is good and available in Law, (c) as the Demandant may releaſe to the vouchee, and yet the vouchee hath nothing in the land, but the reaſon of that is, for that when the vouchee entreth into the warranty, he becometh Tenant to the Demandant, and may render the land to him, in reſpect of the priority, but an ſtranger cannot releaſe to the voucher, becauſe In rei veritate, he is not Tenant of the Land.

(c) 7.E.4.13. 20.H.6.29. 5.H.7.41. 18.E.3.12. 8.H.4.5. 5.E.3.36. 5.E.3.46. Vide Sect. 490. 491.

ITem en releaſes de tout le droit que home ad en certein terres, &c. il conuient a celuy a que le releas eſt fait en aſcun cas, que il ad le franktenemẽt en les terres en fait, ou en ley, al temps de releas fait, &c. car en chaſcun cas lou celuy a que le releas eſt fait ad Franktenemẽt en fait, ou Franktenement en ley, al temps del releas, &c. donque le releas eſt bone.

ALſo in Releaſes of all the right which a man hath in certain lands, &c. it behoveth him to whom the Releaſe is made in any caſe that he hath the free-hold in the Lands, in Deed, or in Law at the time of the Releaſe made, &c. for in every caſe where he to whom the Releaſe is made hath the free-hold in Deed or in Law at the time of the Releaſe, &c. there the Releaſe is good.

(d) Alſo

(d) And so it is if the Tenant alien hanging the Præcipe, the release of the Demandant to the Tenant to the Præcipe is good, and yet he hath nothing in the land. (d) 10.E.4.14. 12.Ass.p.41.

In time of vacation an Annuity, that the person ought to pay, may be released to the Patron in respect of the privity, but a release to the Ordinary only seemeth not good, because the Annuity is temporal. 8.E.3.21 46 E.3.6.b. 8.H.6.23. 21.H.7.41.

If a Disseisor make a lease for life, the Disseisee may release to him, for to such a release of a bare right there needs no privity, as shall be said hereafter. But if the disseisor make a lease for years, the disseisee cannot release to him, because he hath no estate of Free-hold. Also yet in some case a right of Free-hold shall drown in a chattel, as if a Feme hath a right of Dower she may release to the Gardein in Chivalry, and her right of free-hold shall drown in the chattel, because the Writ of Dower doth lie against him, and the heir shall take advantage of it. And it is to be observed, that by the antient maxim of the Common Law, a Right of entry, or a Those in action cannot be granted or transferred to a stranger, and thereby is avoided great oppression, injury and injustice. Nul charter, aul vende, ne nul done vault perpetualment si le donor nest seisie al temps de contracts de 2. droits. s. del droit de possession, & del droit del proprietie. And therefore well saith Littleton, that he to whom a release of a right is made must have a Free-hold. Mirror, cap. 2. Sect. 17.

For the better understanding of transferring of naked rights to lands or tenements, either by release, Feoffment, or otherwise, it is to be known, that there is Jus proprietatis, a right of ownership, Jus possessionis, a right of seisin or possession, and Jus proprietatis & possessionis, a right both of property and possession: and this is antiently called Jus duplicatum, or Droit droit. For example, if a man be disseised of an acre of land, the disseisee hath Jus proprietatis, the disseisor hath Jus possessionis, and if the Disseisee release to the Disseisor, he hath Jus proprietatis & possessionis. And regularly, it holdeth true, that when a naked right to land is released to one that hath Jus possessionis, and another by a mean title recover the land from him, the right of possession shall draw the naked right with it, and shall not leave a right in him to whom the release is made. For example, if the heir of the Disseisor being in by discent, A. doth disseise him, the Disseisee release to A. now hath A. the meer right to the land. But if the heir of the disseisor enter into the land, and regain the possession, that shall draw with it the meer right to the land, and shall not regain the possession only, and leave the meer right in A. but by the recontinuance of the possession, the meer right is therewith vested in the heir of the disseisor. Mirror ubi supra. Bracton, lib. 2. fol. 32. Britton, fol. 89. 121. Bracton, lib. 5. fol. 372.

But if the Donee in tail discontinue in fee, now is the reversion of the Donor turned to a naked right. If the Donor release to the discontinuee and die, and the issue in tail doth recover the land against the discontinuee, he shall leave the reversion in the discontinuee, for the issue in tail can recover but the estate tail only and by consequence must leave the reversion in the discontinuee, for the Donor cannot have it against his release: but if the disseisee enter upon the heir of the disseisor, and infeoffe A. in fee, and the heir of the disseisor recover the whole estate, that shall draw with it the meer right, and leave nothing in the Feoffee. Note the diversity. Another diversity is observable when the naked right is precedent before the acquisition of the defeasible estate, for there the reconstinuance of the defeasible estate shall not draw with it the preceding right. (e) So if the disseisee disseise the heir of the disseisor, albeit the heir recover the land against the disseisee, yet shall he leave the preceding right in the disseisee. So if a woman that hath right of Dower disseise the heir, and he recover the land against her, yet shall he leave the right of Dower in her. (e) 5.Ass.1. 10.Ass.16. 50.E.3 7. 4.E.3.Estopp. 133. 30.Ass.5. 11.E.3.Entrie 56. 12.Ass.41. 27.E. 3. 84. 488.

Another diversity is to be noted, when the meer right is subsequent, and transferred by act in law, there albeit the possession be reconstinued, yet that shall not draw the naked right with it, but shall leave it in him; as if the heir of the disseisor be disseised, and the disseisor infeoffe the heir apparent of the disseisee being full of age, and then the disseisee dieth, and the naked right descend to him, and the heir of the disseisor recover the land against him, yet doth he leave the naked right in the heir of the disseisee. So if the discontinuee of Tenant in tail infeoffe the issue in tail of full age, and the Tenant in tail dye, and then the discontinuee recover the land against him, yet he leaveth the naked right in the issue. (e) But if the heir of the disseisor be disseised, and the disseisee release to the disseisor upon condition, if the Condition be broken, it shall revest the naked right. And so if the Disseisee had entred upon the heir of the disseisor, and made a feoffment in fee, upon condition, if he entred for the condition broken, and the heir of the disseisor entred upon him, the naked right should be left in the Disseisee. But if the heir of the disseisor had entred before the condition broken, then the right of the disseisee had been gone for ever. But now let us hear what Littleton saith. 23.H.8. tit. Restore al action Br. 5. 50.E.3.7. Vid. Sect. 473. 475. 478. 487. (e) 38.E.3.16. 9.H.7.24.

Sect. 448.

¶ HEre Littleton deſcribeth what a Free-hold in Law is, for he had ſpoken before in many places of Free-holds in Deeds. This Bracton calleth (a) Civilem & naturalem poſſeſſionem ſeu ſeiſinam. The natural ſeiſin is the free-hold in Deed, and the Civil the Free-hold in Law.

(a) Bract. li. 4. f. 206. 236. Britton. fol. 8. 3. b. Fleta, lib. 3. cap. 15. Vid. Sect. 380.

42. E. 2. 20. 10. H. 6. 14. 17. E. 3. 78. 2. E. 3. 33.

If a man levy a fine to a man. Sur conuſance de droit come ceo que il ad de ſon done, of a Fine Sur conuſance de droit tantum: Theſe be feoffments of record, and the Conuſee hath a Free-hold in Law in him before he entreth.

11. H. 4 61. 21. H. 7. 12.

Upon an exchange the parties have neither free-hold in Deed, nor in law before they enter. ſo upon a partition the free-hold is not removed until an entry.

(g) 32. E. 3. barre 262. 41. Aſſ. 2. 13. H. 4. ſurrender 10.

(g) If Tenant for life by the agreement of him in the reverſion ſurrender unto him; he in the reverſion hath a free-hold in law in him before he enter. (h) Upon a livery within the view no Free-hold is veſted before an entry.

(h) 38. E. 3. 12.

If a man doth bargain and ſell land by Deed indented and inrolled, the Free-hold in law doth paſs preſently. And ſo when uſes are raiſed by Covenant upon good conſideration.

17. E. 3. 77. 18. E. 4. 25.

If a Tenant in a Præcipe being ſeiſed of lands in Fee, confeſs himſelf to be a Villain to an eſtranger, and to hold the land in Villenage of him, the eſtranger by this acknowledgment is actually ſeiſed of the free-hold and inheritance without any entry. But let us return to Littleton.

¶ FRanktenement en ley eſt, ſicome un home diſſeiſiſt un auter, et moruſt ſeiſie, per q. les tenements diſcendõt a ſon fits, coment q ſon fits ne entra pas e les tenements, uncor il ad un franktenement en ley, quel per force de diſcent eſt jete ſur luy, e pur ceo un releas fait a luy, iſſint eſteant ſeiſie de franktenement en ley, eſt aſſets bon, e ſil pretẽt ſeme iſſint eſteant ſeiſie en ley, coment que il ne unque enter pas en fait, e moruſt, ſon ſeme terra endow.

FReehold in Law is, as if a man diſſeiſeth another and dieth ſeiſed, whereby the tenements deſcend to his ſon, albeit that his ſon doth not enter into the Tenements, yet he hath a free-hold in law, which by force of the diſcent is caſt upon him, and therefore a releaſe made to him ſo being ſeiſed of a free-hold in Law is good enough; and if he taketh wife being ſo ſeiſed in Law, although he never enter in deed and dieth, his wife ſhall be endowed.

Sect. 449.

¶ ITem, en aſcuns cales de releales de tout le droit, coment que celuy a que le releaſe eſt fait nad riens en le franktenement en fait, ne en ley, uncore le releaſe eſt aſſets bone. Sicom le diſſeiſor leſſa la terre que il ad per diſſeiſin a un auter pur terme de ſa vie, ſabant le reverſion a luy, ſi le diſſeiſee ou ſon heire releſſa al diſſeiſor tout le droit, &c.

ALſo in ſome caſes of releaſes of all the right, albeit that he to whom the releaſe is made hath nothing in the free-hold in Deed nor in Law, yet the releaſe is good enough. As if the diſſeiſor letteth the land which he hath by diſſeiſin to another for term of his life ſaving the reverſion to him, if the diſſeiſee or his heir releaſe to the diſſeiſor all the right, &c. this

tel releaſe eſt bone, pur ceo que celuy a que le releaſe eſt fait auoit en luy un reuerſion al temps del releaſe fait.

releaſe is good, becauſe he to whom the releaſe is made had in law a reverſion at the time of the releaſe made.

¶ Here Littleton addeth a limitation to the next precedent Section, viz. that a Releaſe of all the right may be good to him in reverſion, albeit he hath nothing in the Free-hold, becauſe he hath an eſtate in him. 7.E.4.13. 14.H.4. 32.b. 41.E.3.17. 49.E.3.28. Caſe ult.

¶ *Tout le droit, &c.* Or Title, Intereſt, Demand, or the like, and ſo it is, if he in the reverſion hath an eſtate for life or in tail in reverſion, as in the like caſe it appeareth in the next Section.

Sect. 450.

¶ EN meſme le maner eſt, lou leas eſt fait a un home pur terme de vie, le remainder a un auter pur terme de auter vie, le remainder a le tierce en le taile, le remainder a le quart en fee, ſi un eſtranger que droit ad a la terre, releſſa tout ſon droit a alcun de eux en le remainder, tiel releaſe eſt bone, pur ceo que chelcun de eux ad un remainder en fait deſſue en luy.

IN the ſame manner it is, where a Leaſe is made to a man for term of life, the remainder to another for term of another mans life, the remainder to the third in tail, the remainder to the fourth in fee, if a ſtranger which hath right to the Land releaſeth all his right to any of them in the remainder, ſuch releaſe is good, becauſe every of them hath a remainder in Deed veſted in him.

¶ Here is another limitation, that a releaſe is good to him in the remainder, albeit he hath nothing in the Free-hold in poſſeſſion, becauſe he hath an eſtate in him, as hath been ſaid. In both theſe limitations it is to be obſerved, that the ſtate which maketh a good Tenant to the Præcipe, is ſaid to be the Free-hold, as here the ſtate of Tenant for life, and not the reverſion in Fee. 7.E.4.13. 41.E.3.17. 7.E.3.54. 18. E. 2. Tit. Entrie 74. 3.E. 2. Tit Entrie 7. F. N. B. 207. E.

Sect. 451.

¶ MES ſi le tenant a terme de vie ſoit diſſeiſe, & puis celuy q̄ ad droit (eſteant le poſſeſſion en le Diſſeiſor) releſſa a un de eux a que le remainder fuit fait tout ſon droit, cel releaſe eſt void pur ceo que il navoit un remainder en fait al temps de releaſe fait, forſq; tantſolement un droit del remainder.

BUt if the Tenant for term of life be diſſeiſed, and afterwards he that hath right (the poſſeſſion being in the Diſſeiſor) releaſeth to one of them to whom the remainder was made all his right, this releaſe is void, becauſe he had not a remainder in Deed at the time of the releaſe made, but only a right of a remainder.

¶ *Forſque tantſolement un droit del remainder.* For a releaſe of a right to one that hath but a bare right regularly is void; for as Littleton hath before ſaid, he to whom a releaſe is made of a bare right in Lands and Tenements muſt have either a Free-hold in Deed or in Law in poſſeſſion, or a ſtate in remainder or reverſion in Fee or Fee tail, or for life. Vide Sect. 454.

Sect.

Sect. 452.

¶ By this it appeareth, That as a Releaſe made of right to him in reverſion or remainder, ſhall aid and beneſit him that hath the particular eſtate for years, life, or eſtate Tail, ſo a releaſe of right made to a particular Tenant for life, or in Tail, ſhall aid and beneſit him or them in the remainder.

If two Tenants in Common of Land grant a Rent charge of 40 s. out of the ſame, to one in fee, and the Grantee releaſe to one of them, this ſhall extinguiſh but twenty ſhillings, for that the Grant in judgment of Law was ſeveral. So it is if two men be ſeiſed of ſeveral Acres, and grant a rent ut ſupra. But there is a diverſity between ſeveral eſtates in ſeveral lands, and ſeveral eſtates in one land, for if one be Tenant for life of lands, the reverſion in fee over to another, if they two joyn in a grant of a rent out of the Lands, if the Grantee releaſeth either to him in the reverſion, or to Tenant for life, the whole rent is extinguiſhed, for it is but one rent and iſſueth out of both eſtates, and ſo note the diverſity.

¶ *Si le Tenant ad le fait en ſon poigne a pleader.* And ſo it is in both caſes: for albeit he in the reverſion or remainder is a ſtranger to the Deed when the releaſe is made to the Tenant, and the Tenant for life or in Tail is a ſtranger to the Deed, when the releaſe is made to him in reverſion or remainder, yet ſeeing they are privies in eſtate, none of them in pleading ſhall take beneſit thereof, without ſhewing the ſame in Court, which is worthy to be obſerved.

35. H. 6. 8.

¶ *Sils ceo poient monſtre.* The one cannot plead the Releaſe made to the other without ſhewing of it, for that they are privy in eſtate, as hath been ſaid. The reaſon of theſe two Sections needs no explication.

¶ ET nota, Que chescun releaſe fait a celuy que ad un reverſion ou un remainder en Fait, ſerbera & aidera celuy que ad le Franktenement, auxybien come a celuy a que le Releaſe fuit fait, ſi le Tenant avoit le Releaſe en ſon poign de pleader.

AND note that every Releaſe made to him which hath a reverſion or a Remainder in Deed, ſhall ſerve and aid him who hath the Freehold, as well as him to whom the Releaſe was made, if the Tenant hath the Releaſe in his hand to plead.

Sect. 453.

¶ ET en meſme le manner eſt lou un Releaſe & fait al Tenant pur terme de vie, ou al Tenant en le Taile, ceo urera a eux en le reverſion, ou a eux en le Remainder auxybien come al Tenant de Franktenement, & averont auxy grand advantage de cel, ſils ceo poyent monſtre.

IN the ſame it is, where a Releaſe is made to the Tenant for life, or to the Tenant in Tail, this ſhall enure to them in the reverſion, or to them in the remainder, as well as to the Tenant of the Freehold, and they ſhall have as great advantage of this, if they can ſhew it.

Sect.

Sect. 454.

¶ Item, ſi ſoit Seignior & Tenant, & le Tenant ſoit diſſeiſie, & le ſeignior releſſa al Diſſeiſée tout le droit que il avoit en le ſeignory, ou en le terre, cel releaſe eſt bone, & le Seigniory eſt extinct, & ceo eſt pur cauſe del privity, que eſt perenter le Seignior, & le Diſſeiſée, car ſi les avers le diſſeiſée ſoient pris, & de eux le Diſſeiſée ſuiſt un Replevin enders le Seignior, il compellera le Seignior davowrer ſz luy, car il avower ſur le Diſſeiſor, donques ſur l'matter monſtre lavowry abatera, car le Diſſeiſée eſt Tenant a luy en droit & en la Ley.

ALſo if there be Lord & Tenant, and the Tenant be diſſeiſed, and the Lord releaſeth to the Diſſeiſee all the right which he hath in the Seigniory or in the Land, this Releaſe is good, and the Seigniory is extinct: And this is by reaſon of the privity which is between the Lord and the Diſſeiſee: for if the Beaſts of the Diſſeiſee be taken, and of them the Diſſeiſee ſueth a Replevin againſt the lord, he ſhall compel the Lord to avow upon him, for if he avow upon the diſſeiſor, then upon the matter ſhewn the Avowry ſhall abate, for the Diſſeiſee is Tenant to him in right and in Law.

HEreupon may be collected and obſerved two diverſities: Firſt, Between a Seigniory or Rent ſervice, and a Rent Charge: for a Seigniory or rent ſervice may be releaſed and extinguiſhed to him that hath but a bare right in the land. And the reaſon hereof is in reſpect of the privity between the Lord and the Tenant in right, for he is not only as Tenant to the avowry, but if he dye his Heir within age, he ſhall be in ward; and if of full age, he ſhall pay relief, and if he die without Heir, the land ſhall eſcheat. But there is no ſuch privity in caſe of a Rent charge, for there the charge only lieth upon the land.

The ſecond diverſity is between a Seigniory and a bare right to land: for a releaſe of a bare right to land, to one that hath but a bare right is void, as hath been ſaid. But here in the caſe of our Author, a Releaſe of a Seigniory to him that hath but a right, is good to extinguiſh the Seigniory. Vide Sect. 451.

Nota, a Seigniory, Rent, or right, either in præſenti, or in futuro, may be releaſed five manner of ways, and the firſt three without any privity. Firſt, To the Tenant of the free-hold in Deed or in law. Lib. 10. f. 48. Lampets Caſe.

Secondly, To him in remainder. Thirdly, To him in the reverſion. The other two in reſpect of privity, as firſt, here the Lord releaſeth his Seigniory to the Tenant being diſſeiſed, having but a right, and no eſtate at all. Secondly, in reſpect of the privity, without any eſtate or right, as by the demandant to the Vouchee, or Donor to the Donee, after the Donee hath diſcontinued in fee, as appeareth hereafter in this Chapter. Sect. 455.

¶ *Pur cauſe de privity, &c.* See for this word (Privity) Sect. 461.

¶ *Il compellera le Seignior davowrer ſur luy, &c.* This is regularly true, but if the Lord hath accepted ſervices of the diſſeiſor, then the diſſeiſee cannot enforce the Lord to avow upon him, though his beaſts be taken, &c. 20. H. 6. 9 b. 41. E. 3. 26. 48. E. 3. 9. 2. E. 4. 6. 2.

If a man hath title to have a writ of Eſcheat, if he accept homage or fealty of the Tenant, he is barred of his Writ of Eſcheat: but if he accept rent of the tenant, that is no bar to him, for it may be received by the hands of a Bayliff. (d) But ſome do hold, that if there be Lord and Tenant, and the Tenant be diſſeiſed, and the diſſeiſee dye without Heir, the Lord accepts rent by the hands of the diſſeiſor, this is no bar to him. Contrary if it is, if he avow for the diſſeiſor is in by wrong: but if the Lord accept the rent by the hands of the Heir of the diſſeiſor, or of his Feoffee, becauſe they be in by title, this ſhall bar him of his Eſcheat. Which is to be 31. E. 1. Diſcent. 17. 26. E. 3. 72. 4. H. 6. 21. F. N. B. 144. o. (d) 7. E. 6. Tit. Eſcheat. Br. 18.

be underſtood of a diſcent or Feoffment after the title of Eſcheat accrued: (e) for if the diſſeiſee make a Feoffment in Fee, or die ſeiſed, and after the diſſeiſee dye without Heir, then there is no Eſcheat at all, becauſe the Lord hath a Tenant in by Title. And when Littleton wrote, the diſſeiſee in the caſe here put, ſhould have compelled the Lord to have avowed upon him, as Littleton holdeth. But now this is altered by a later Stat. of (f) 21. H. 8. for whereas by Fines, Recoveries, Grants, and ſecret Feoffments, &c. made by Tenants to perſons unknown, the Lords were put from knowledge of their Tenants, upon whom by order of law they ſhould make their Avowry, &c. It is by that Statute enacted, That if the Lord ſhall diſtrain upon the lands and Tenements holden, &c. that he may avow, &c. upon the ſame lands, &c. as in lands, &c. within his Fee or Seigniory, &c. without naming of any perſon certain, and without making avowry upon a perſon certain. Upon which Statute theſe four points are to be obſerved: First, That the Lord hath ſtill election either to avow according to the Common law, by force of the Statute, by reaſon of this word (May.) Secondly, Albeit the purview of the Act be general, yet all neceſſary incidents are to be ſupplyed, and the ſcope and end of the Act to be taken: and therefore though he need not to make his avowry upon any perſon certain, yet he muſt alleage Seiſin by the hands of ſome Tenant in certain, within forty years. Thirdly, That if the Avowry be made according to the Statute, every Plaintiff in the replevin or ſecond deliverance, be he Termor or other, may have every anſwer to the Avowry that is ſufficient: and alſo have aid, and every other advantage in law, (diſclaimer only except) for diſclaim he cannot, becauſe in that caſe the avowry is made upon no certain perſon. Fourthly, Where the words of the Statute be, if the Lord diſtrein upon the lands and Tenements holden, yet if the Lord come to deſtrein, and the Tenant enchaſe his Beaſts which were within the view, out of the land holden, and there the Lord diſtrein, albeit the diſtreſs be taken out of his Fee and Seigniory in that caſe, yet is it within the ſaid Statute, for in judgment of law the diſtreſs is lawful, and as taken within his Fee and Seigniory, and this Statute being made to ſuppreſs Fraud, is to be taken by equity.

(e) 7.H.4.17. 3.R.2. Entr. cong. 38. 2 H. 4 8. 6.H.7 9. Vide Sect. 556.

(f) 21.H.8. cap. 19.

Lib. 9. fol. 136. Aſcoughs caſe. 27.H 8. fol. 4. 32.H.8. cap. 2. Lib 9. fol. 36. Bucknals caſe. 34 H 8. Avowry Br. 113. 27 H. 8. 4. & 20. Bucknals caſe ubi ſupra

Lib 9. fol. 22. in caſe Davowrie. 44. E. 3. 20. 11. H. 7. 4. 21. H. 7 40. 34. H. 6. 18. 16. E. 4. 10. 6. R. 2. Reſcou. 11.

Sect. 455.

¶ Item, ſi terre ſoit done a un home en Taile, reſervant al Donor & a ſes heires un certaine rent, ſi le Donée ſoit diſſeiſie, & puis le Donor releſſa al Donée & a ſes heires, tout le droit que il avoit en la Terre, & puis le Donée enter en la terre ſur le Diſſeiſor, en ceſt caſe le rent eſt ale, pur ceo que le Diſſeiſee al temps de releaſe fait, fuit tenant en droit, & en la Ley al Donor, & avowr̃ a fine force covient de eſtre fait ſur luy per le Donor pur le rent aderere, &c. Mes uncore rien de droit de terres, ſ̃, de le droit, de le reverſion paſſera per tiel Releaſe, pur ceo que le Donée a que le Releaſe eſt fait, adonque navoit riens en la Terre forſque tantſolement un droit, & iſſint le droit del Terre ne puiſſoit adonques paſſer al Donée per tiel Releaſe.

ALſo if land be given to a man in Tail, reſerving to the Donor and to his Heirs a certain rent, if the Donee be diſſeiſed, and after the Donor releaſe to the Donee & his Heirs all the right which he hath in the Land, and after the Donee enter into the Land upon the Diſſeiſor, in this caſe the Rent is gone, for that the Diſſeiſee at the time of the Releaſe made, was Tenant in Right, and in Law to the Donor, and the Avowry of Fine force ought to be made upon him by the Donor for the rent behind, &c. but yet nothing of the right of the lands, (*ſcil.*) of the reverſion, ſhall paſs by ſuch Releaſe, for that the Donee to whom the Releaſe is made, then had nothing in the Land but only a right, and ſo the right of the Land could not then paſs to the Donee by ſuch Releaſe.

¶ *Si*

¶ *Si le donee soit disseisie, &c.* This is evident by that which hath been said. But admit that the Donee maketh a feoffment in fee, and the Donor release unto him and his Heirs, all the right in the land, this shall extinguish the rent because the Lord must avow upon him and per the Tenant in tail after the feoffment hath no right in the land. But the reason is in respect of the privity, and that the (m) Donor is by necessity compellable to avow upon him only, for if he should avow upon the discontinuee, then it should appear of his own shewing, that the reversion whereunto the rent is incident should be out of him, and consequently the Avowry should abate, and so was it (n) resolved, Trin. 18. Eliz. in the Court of Common Pleas in Sir Thomas Wiats case, which I heard and observed. And Littleton saith here, that in case of the Disseisin of fine force, the Avowry must be made upon the Donee.

Vide Sect. 454 1 H 5. tit grant. 43 14 H 4. 38 li. 3. fol. 29. lib 6. 58. Lampets case ubi sup a.

(m) 10. E. 3. 26 48. E. 2. 8. b. 31. E. 3. gard. 116. 5. E. 4. 3. 7 E. 4. 27. 15. E. 4 13.

(n) Trin. 18. Eliz. Sir Thomas Wiats case in Communi Banco.

¶ *Encore rien s de droit &c. de reverſion, &c.* Here the diversity aforesaid between the Rent Service, and a bare right to the land appeareth.

Sect. 456.

¶ EN meſme le manner eſt, ſi leas ſoit a un pur terme de vie, reſervant al leſſor & a ſes heires certaine rent, ſi le leſſee ſoit diſſeiſie, & puis leſſor releſſa al leſſee & a ſes heires, tout le droit que il ad en la terre, & apres le leſſee enter, coment que en ceſt cas le rent eſt extinct, uncore rien del droit de la reverſion paſſera, Cauſa qua ſupra.

IN the ſame manner it is, if a leaſe be made to one for term of life; reſerving to the leſſor and to his Heirs a certain rent, if the Leſſee be diſſeiſed, and after the Leſſor Releaſe to the Leſſee and to his Heirs all the right which he hath in the land, and after the leſſee entreth, albeit in this caſe the rent is extinct, yet nothing of the right of the reverſion ſhall paſs, *Cauſa qua ſupra.*

¶ Hereby the diverſity is made apparent between a Releaſe of a Rent Service out of land, and a Releaſe of right to land in this Section.

Sect. 457.

¶ MES ſi ſoit beray ſeignior & beray tenant, & le tenãt fait un feoffment en fee, le quel feoffee ne unque devient tenant al Seignior, ſi l'Seignior releſſa al feoffor tout ſon droit &c. ceſt releas eſt en tout void, pur ceo q̃ le feoffor ad nul droit en la terre et il neſt Tenant en droit al

BUt if there be very Lord & very tenant and the tenant maketh a feoffment in fee, the which feoffee doth never become tenant to the Lord, if the Lord releaſe to the Feoffor all his right, &c. this releaſe is altogether void, becauſe the Feoffor hath no right in the Land, and he is not Tenant in right to the

¶ *Veray Seignior & veray tenant*

This is to be underſtood of a Lord in fee ſimple, and of a Tenant of the eſtate.

There be four manner of Avowries for rents and Services, &c. viz. 1. Super verum tenentem, as in the caſe here put. 2. Super verum tenentem in forma prædicta, as where a Leaſe for life, or a gift in tail be made, the remainder in fee. 3. Upon one as upon his tenant by the manor omitting (verie) and this is when the Lord hath a particular eſtate in the Seignory, and ſo ſhall the Donor upon

Vide Aſcoughes caſe. l. 9. f. 135. 136. 20. H. 6 9. 2. H. 4, 24. 12. E. 4. 2. 26. H. 6. Avowry 17. 9. El. Dier 257. 5. H. 7. 11. 7. E. 4. 24. 20. E. 3. Avowry 131.

upon the Donee, or Leſſor upon the Leſſee. 4. Sur le matter en la terre, as within his fee and Seigniory. As where the Tenant by Knights Service maketh a leaſe for life reſerving a Rent, and die his Heir within Age, the Gardein ſhall Avow upon the leſſee, ſcil. Super materiam prædictam in terris & tenementis prædictis ut infra feodum & Dominium ſuum. Now by the Statute the very Lord may Avow as in Lands within his fee and Seigniory, without Avowing upon any perſon in certain.

47 E.3.fo'. ultimo. 38.H.6.23.

Seignior, mes tãnt ſolement tenant quãt al abowry faire, et il ne unques compellera le Seignior dabower ſur luy, car le ſeignior abowera ſur le feoffee ſil voile.

Lord, but only tenant as to make the avowr, and he ſhall never compel the Lord to avow upon him, for the Lord ſhall avow upon the feoffee if he will.

21.H.8.cap.19.

Here appeareth the diverſity between a Tenant in Tail, and a Tenant in Fee Simple, for albeit Tenant in Tail make a feoffment in fee, yet the right of the Entail remains, and ſhall deſcend to the Iſſue in tail. But when the tenant in fee ſimple make a feoffment in fee, no right at all remain of his eſtate, but the whole is transferred to the Feoffee.

Alſo the Lord is not compellable in that caſe to Avow upon the Feoffor, but if he will as Littleton here ſaith, he may Avow on the feoffee, but ſo it is not, as hath been ſaid, in caſe of tenant in Tail.

Note a diverſity between Actions and Acts which concern the right, and Actions and Acts which concern the poſſeſſion only. For a Writ of Cuſtoms and Services lieth not againſt the feoffor, nor a releaſe to him ſhall extinguiſh the Seigniory. So if a Reſcous be made, an Aſſiſe ſhall not lie againſt the feoffor, and him that made the Reſcous, becauſe the feoffee is Tenant, and in Aſſiſe, the ſurpluſage incroached ſhall be avoided. For theſe Actions and Acts concern the right, but of a ſeiſin and an Avowry which concern the poſſeſſion, it is otherwiſe. And if the Lord releaſe to the feoffor this is good between them, as to the poſſeſſion and diſcharge of the Arrerages, but the feoffee ſhall not take benefit of it, for that, as hath been ſaid, it extendeth not to the right. But the feoffor ſhall plead a releaſe to the feoffee, for thereby the Seigniory is extinct, as if leſſee for life doth waſte, and grant over his eſtate, and the leſſor releaſe to the Grantee, in an Action of waſte againſt the leſſee, he ſhall plead the releaſe, and yet he hath nothing in the land. And ſo in waſte ſhall Tenant in Dower or by the courteſie in the like caſe, and the voucher, and the Tenant in a Præcipe after a feoffment made. And ſo in a Contra formam collationis.

4.E.3.22. 7.E.3. 8. 7.E. 4.27. 29.H.8. tit. avowry. Br.111. Li.3.f.65. 66. Pennants caſe. 7.H.4.14. 2.E.4.6. 34.H.6.46. 37 H.6. 29.H.8. Avowry.

¶ *Le feoffee ne unques deveigne tenant.* Nota, here an excellent point of learning, viz. if there be Lord and Tenant, and the Rent is behind by divers years, and the Tenant make a feoffment in fee, if the Lord accept the Service or Rent of the feoffee for in this time, he ſhall loſe the Arrerages due in the time of the feoffor. For after ſuch acceptance he ſhall not avow upon the feoffor, nor upon the feoffor for the arrerages incurred in the time of the feoffor. But in that caſe if the feoffor dieth, albeit the Lord accept the Rent or Service by the hand of the feoffee due in his time, he ſhall not loſe the arrerages, for now the law compelleth him to avow upon the feoffee, and that which the law compelleth him unto, ſhall not prejudice him.

So it is and for the ſame reaſon, if there be Lord, Meſne, and Tenant, and the rent due by the Meſne is behind, and after the Tenant forejudge the Meſne, and the lord receive the Services of the Meſne which iſſue out of the Tenancy, he ſhall not be barred of the Arrerages which iſſued out of the Meſnalty, and ſo if the rent be behind, and the Tenant purchaſe the acceptance of the Services by the hand of the heir ſhall not bar him of the arrerages, for in theſe caſes albeit the perſons be altered, yet the lord doth accept the ſervices of him which only ought to do them.

4.E.3.22. 47.E. 3.4.

But as long as the feoffor liveth, the lord ſhall not be compelled to avow upon the feoffee, unleſs he giveth the lord notice, and tender unto him all the arrerages.

21.H.8.cap.19.

But now by the Statute the lord may avow upon the lands ſo holden, as in lands within his Fee or Seigniory without naming of any perſon certain to be Tenant of the ſame, and without making of any avowry upon any perſon certain, as hath been ſaid, which hath much altered the Common law in the caſes above-ſaid, for the benefit and ſafety of the lord.

But yet theſe caſes are neceſſary to be known (for which purpoſe I have added them) for that the lord may avow ſtill at the Common law if he will.

Sect.

Sect. 458.

¶ Autrement eſt lou le veray Tenant eſt diſſeiſie, come en le cas avantdit, car ſi le veray tenant que eſt diſſeiſie teigne del Seignior per ſervice de chivaler & morust (ſon heire eſteant deins age) le Seignior avera & ſeiſera le garde del heire, & iſsint navera, il ny le gard del feoffor que fit le feoffment en fee, &c. iſsint il eſt graund diverſity enter les deux caſes, &c.

OTherwiſe it is where the very Tenant is diſſeiſed, as in the caſe aforeſaid, for if the very tenant who is diſſeiſed, hold of the Lord by Knights Service and dieth (his heir being within age) the Lord ſhall have and ſeize the Wardſhip of the heir, and ſo ſhall he not have the ward of the feoffor that made the feoffment in fee, &c. So there is a great diverſity between theſe two caſes.

12 H. 4. 13. 36. E. 3. tit. gard. 10. 6. H. 7. 9. 37. H. 6. 1. 32 H. 6. 27. 7. E. 6. tit. gard. Br.

Of this ſufficient hath been ſaid before.

Sect. 459.

¶ Item, ſi un home leſſa a un auter ſon terre pur terme dans, ſi le leſſor releſſa al leſſée tout ſon droit, &c. devant que le leſſée avoit enter en meſme le terre per force d meſme l'leas, tiel releas eſt void, pur ceo que le leſſée navoit poſſ. en la terre al temps del releas fait, mes tantſolement un droit daver meſme la terre per force de meſme le leas. Mes ſi le leſſée enter en meſme la terre, & ent eit poſſ. per force de meſme le leas, donque tiel releas fait a luy per le feoffor, ou per ſon heir, eſt ſufficient a luy per cauſe del privity, que per force del leas eſt perenter eux, &c.

ALſo if a man letteth to another his land for term of years, if the leſſor releaſe to the leſſee all his right, &c. before that the leſſee had entred into the ſame land by force of the ſame leaſe, ſuch releaſe is void, for that the leſſee had not poſſeſſion in the land at the time of the releaſe made, but only a right to have the ſame land by force of the leaſe. But if the leſſee enter into the Land, and hath poſſeſſion of it by force of the ſaid leaſe, then ſuch releaſe made to him by the feoffor, or by his heir is ſufficient to him, by reaſon of the privity which by force of the leaſe is between them, &c.

¶ *Devant que le leſſee avoit enter, &c.* For before entry the leſſee hath but intereſſe termini, an intereſt of a term, and no poſſeſſion, and therefore a releaſe, which enure by way of enlarging of an eſtate cannot work without a poſſeſſion. for before poſſeſſion there is no reverſion, and yet if a tenant for twenty years in poſſeſſion, make a leaſe to B. for 5 years, and B. enter, a releaſe to the firſt leſſee is good, for he had an actual poſſeſſion, and the poſſeſſion of his leſſee is his poſſeſſion. And ſo it is if a man make a leaſe for years, the remainder for years, and the firſt leſſee doth enter, a releaſe to him in the remainder for years is good to enlarge his eſtate.

49. E. 3. 28. 32. H. 6. 8. 37. H. 6. 18. 22. E. 4. 37. 4. H. 7. 10. 15. H. 7. 14.

22. E. 4. Surrender 6.

But if a man make a leaſe for years to begin preſently, reſerving a rent, if before the leſſee doth enter the leſſor releaſeth all the right that he hath in the land, albeit this releaſe cannot enlarge his eſtate, yet it ſhall in reſpect of the privity extinguiſh the rent. And ſo it is if a leaſe be made to begin at Michaelmas, reſerving a rent, and before the day the leſſor releaſe all the right that he hath in the land, this cannot enure to enlarge

enlarge the eſtate, but to extinguiſh the rent in reſpect of the privity, as it was reſolved (b) in the Exchequer, which I obſerved.

(b) Mich. 39. & 40. Eliz. in Scaccario, between Sir Henry Woodhouſe, and Sir William Paſton.

A man granteth the next avoidance of an Advowſon or two, the one of them may before the Church become void releaſe to the other, for although the Grantor cannot releaſe to them to increaſe their eſtate, becauſe their intereſt is future, and not in poſſeſſion, yet one of them to extinguiſh his intereſt may releaſe to the other in reſpect of the privity. But after the Church become void, then ſuch a releaſe is void, becauſe then it is (as it were) but a thing in Action. And this was reſolved (c) by the whole Court of Common pleas, which I my ſelf heard and obſerved. And by conſequent in the caſe of Littleton, if a Leaſe for years be made to two, albeit the leſſor before they enter cannot releaſe to them to enlarge their eſtate, yet one of them may before entry Releaſe to the other.

(c) Paſch. 38. Eliz. in quare impedit per Bennet, verſ. Jeveſque de Norwich in Communi banco.

¶ *Mes tantſolement un droit, &c.* Which is not ſo to be underſtood that he hath but a naked right, for then he could not grant it over, but ſeeing he hath Intereſſe termini before entry, he may grant it over, albeit for want of an actual poſſeſſion he is not capable of a Releaſe to enlarge his eſtate.

Pl. Com. 423.

¶ *Mes ſi le leſſee enter en meſme le terre, &c.* This is evident. And herein note a diverſity between a leaſe for life, and for years, for before the leſſee for years enter, a Releaſe cannot be made unto him, but if a man make a leaſe for life, the remainder for life, and the firſt leſſee dieth, a releaſe to him in the remainder and to his heirs is good before he doth enter to enlarge his eſtate, for that he hath an eſtate of a Free-hold in law in him, which may be enlarged by releaſe before entry.

25. E. 3. 53. 31. E. 3. Confirmat. 14. 31. Aſſ. Pl. 13.

And where our Author ſpeaketh only of a leſſee for years, the ſame law it is of a Tenant by Statute merchant or Staple, or Tenant by Elegit, or the like.

Sect. 460, & 461.

21. H. 6. 37. 2. E. 4. 6. b. 7. E. 4. 27. 8. E. 4. 16. 29. H. 6. Releaſes 6.

¶ By theſe two Sections is to be obſerved a diverſity between a Tenant at will, and a Tenant at ſufferance, for a releaſe to a Tenant at will is good, becauſe between them there is a poſſeſſion with a privity, but a releaſe to a Tenant at ſufferance is void, becauſe he hath a poſſeſſion without privity. As if leſſee for years hold over his term, &c. a Releaſe to him is void, for that there is no privity between them, and ſo are the books that ſpeak of this matter to be underſtood.

¶ * *Sed contrarium tenetur, &c.* This is of a new addition, and the book here cited ill underſtood, for it is to be underſtood of a Tenant at ſufferance.

¶ *De ſa teſte demeſne occupia.* He doth not ſay, De ſa ceſte

¶ Et meſme le maner eſt, come il ſemble, ou leaſe eſt fait a un home, a tener de l' leſſor a ſa volunt, per force de quel leas le leſſe eit poſſeſſion, ſi le leſſor en ceſt caſe fait un releas al leſſe, de tout ſon droit, &c. ceſt releas eſt aſſets bon pur le privity que eſt penter eux, car en vain ſerra de faire eſtate per un livery de ſeiſin a un auter, lou il ad poſſeſſion de meſmes les tenements per le leas de meſme celuy debant, &c.

¶ * Sed contrarium tenetur, P. 2. Ed. 4. p touts les Juſtices.

¶ IN the ſame manner it is as it ſeemeth, where a Leaſe is made to a man to hold of the Leſſor, at his will, by force of which Leaſe the Leſſee hath poſſeſſion, if the Leſſor in this caſe make a Releaſe to the Leſſee of all his right, &c. this Releaſe is good enough for the privity which is between them, for it ſhall be in vain to make an eſtate by a livery of ſeiſin to another where he hath poſſeſſion of the ſame land by the leaſe of the ſame man before, &c.

But the contrary is holden, *Paſch.* 2. E. 4. by all the Juſtices.

Sect.

Sect. 461.

¶ Mes lou home de ſa telle demeſne occupia terres ou tenements a la volunt celuy que ad le Franktenement, & tiel occupier ne claima riens forſq; a volunt, &c. ſi celuy que ad le Franktenement voile releaſer tout ſon droit al occupier, &c. tiel Releaſe eſt void, pur ceo que nul privity eſt perenter eux per leaſe fait al occupier, ne per auter manner, &c.

But where a man of his own head occupieth Lands or Tenements at the will of him which hath the Free-hold, and ſuch occupier claimeth nothing but at will, &c. if he which hath the Free-hold will releaſe all his right to the occupier, &c. this releaſe is void, becauſe there is no privity between them by the leaſe made to the occupier, nor by other manner, &c.

demeſne enter, &c. ſo as this is to be underſtood of a Tenant at ſufferance, viz. where a man cometh to the poſſeſſion firſt lawfully, and holdeth over. Vide Sect. 68.

(m) For if a man entreth into Land of his own wrong, and take the profits, his words to hold it at the will of the owner cannot qualifie his wrong, but he is a Diſſeiſor, and then the Releaſe to him is good, or if the owner conſented thereunto, then he is a Tenant at will, and that may alſo the Releaſe is good. But there is a diverſity when one cometh to a particular Eſtate in Land by the act of the party, and when by act in Law, for if the Gardien hold over, he is an abator becauſe his intereſt came by act in Law. (m) Temps H. 8 Tit. Tenant a volunt. Br. 15. 2. E. 4. 38. 18. E. 4. 25. 39. E. 3. 28. 12. E 3 Aſſ. 86. 11. E. 3. ibid. 87. 12. Aſſ. 21. 13. E. 3. Aſſ. 32. 28. Aſſ 11. 34. Aſſ. 10. 10. E. 3. 41. 8. E. 3. 63. Vide 2. part of the Inſtitutes Marlb cap. 16. & 10. E. 4. 5. 10.

¶ *Nul privity.* Privity, is a word common aſwell to the Engliſh, as to the French, and in the underſtanding of the Common Law is four-fold. Old N. B. 117. 13. Lib. 3. fol. 23. Walkers caſe. Lib. 4. fol. 123 124.

1. Is Privies in eſtate, whereof Littleton here ſpeaketh, as between the Donor and Donee. Leſſor and Leſſee, which privity is ever immediate. Vide Sect. 454.

2. Privies in Blood, as the Heir to the Anceſtor, or between Coparceners, &c.

3. Privies in Repreſentation, as Executors, &c. to the Teſtator.

Fourthly, Privities in Tenure as the lord and Tenant, &c. which may be reduced to the general heads, Privies in Deed, and Privies in law.

Sect. 462, & 463.

¶ Item, ſi home enfeoffe aukrs hões de ſa terre ſur confidence, & al entent de performer ſa darreiſt volunt, & le feoffor occupiaſt meſme la terre a le volũt de ſes feoffees, & puis les feoffees releſſont per lour fait a lour feoffor tout lour droit, &c. ceo ad eſte un queſtion, ſi tiel releaſe ſoit bon ou non. Et aſcũs ont dit, q̃ tiel releaſe

Alſo if a man enfeoffe other men of his land upon confidence, and to the intent to perform his laſt will, and the Feoffor occupieth the ſame Land at the will of his Feoffees, and after the Feoffees releaſe by their deed to their Feoffor all their right, &c. this hath been a queſtion if ſuch releaſe be good or no. And ſome have ſaid, that

¶ Here is a queſtion moved, and the reaſon of both ſides ſhewed, and as it hath been obſerved, the latter opinion is the better, being Littletons own opinion. 12. E. 4. 12. b. 15. E. 4. 9. H. 7. 25. Vide Sect. 302. 176. 340.

¶ *Il ſerra entendue per la Ley que le Feoffor doit maintenant occupie la terre a la volunt de les Feoffees.* For intendments of law mentioned by our Author, ſee the Section in the margent. 4. E. 4. 8. b. 9. H. 7. fol. ultimo. 15. H. 7. 2. b. 14. H 8. 9. 2. Sect. 93. 100. 110. 367. 377. 393. 406. 440.

Here is to be obſerved the intendment of law, that when a Feoffment is made to a future uſe, as to the performance of his laſt will the Feoffees 35. H. 6. Subpena 22. 15. H. 7. 12. b. 37. H. 6. 36. 11. H. 4. 52. 7. H. 4. 22. 1. Mar. 111. Dier.

Feoffees ſhall be ſeiſed to the uſe of the Feoffor and of his Heirs in the mean time.

Ipſæ etenim Leges cupiunt ut jure regantur.

And reaſon would that ſeeing the Feoffment is made without conſideration, & the Feoffor hath not diſpoſed of the profits in the mean time, that by conſtruction and intendment of Law the Feoffor ought to occupy the ſame in the mean time. And ſo it is when the Feoffor diſpoſeth the profits for a particular time in præſenti, the uſe of the Inheritance ſhall be to the feoffor and his Heirs, as a thing not diſpoſed of. Wherein it is to be obſerved, That Lands and Tenements conveyed upon confidences, uſes, and truſts, are to be ruled and decided, if queſtion groweth upon the confidences, uſes, or truſts, by the Iuoges of the Law: for that it appeareth by this and the next Section, they are within the Entendment and Conſtruction of the laws of the Realm.

35.H.6. Subpena 22. 30.H.6. tit. Deviſe.

And it is to be obſerved (as hath been ſaid) that there is a diverſity between a Feoffment of lands at this day upon confidence, or to the intent to perform his laſt will, and a Feoffment to the uſe of ſuch perſon and perſons, and of ſuch eſtate and eſtates, as he ſhall appoint by his laſt will, for in the firſt caſe, the land paſſeth by the Will, and not by the Feoffment, for after the Feoffment the Feoffor was ſeiſed in Fee ſimple as he was before, but in the latter Caſe the will purſuing his power is but a direction of the uſes of the Feoffment, and the Eſtates paſs by execution of the uſes, which were raiſed upon the Feoffment, but in both caſes the Feoffees are ſeiſed to the uſe of the Feoffor and his Heirs in the mean time, and all this and much more concerning this matter hath been adjudged.

Lib.6. fol 17.18. Sir Edward Cleres caſe. Dillon & Frayns caſe, &c. fol.113.

Note, uſes are raiſed either by tranſmutation of the eſtate, as by Fine, Feoffment, common Recovery, &c. or out of the ſtate of the owner of the land, by bargain and ſale by Deed indented and inrolled, or by covenant upon lawful conſideration, whereof you may read plentifully in my Reports.

A Feoffee to the uſe of A. and his Heirs before the Statute of 27.H.8 for money bargaineth and ſelleth the land to C. and his Heirs, who hath no notice of the former uſe, yet no uſe paſſeth by this bargain and ſale, for there cannot be two uſes in Eſſe, of one and the ſame Land, and ſeeing there is no tranſmutation of poſſeſſion by the terre-tenant, the former uſe can neither be extinct nor altered. And if there could be two uſes of one and the ſame land, then could not

eſt voyd, pur ceo que nul privity fuit perenter les Feoffees & lour Feoffor, entant que nul Leaſe fuit fait apres tiel Feoffment per les feoffees al Feoffor, a tener a lour volunt. Et alcuns ont dit le contrarie, & ceo p̄ deux cauſes.

ſuch Releaſe is void, becauſe there was no privity between the Feoffees & their Feoffor, inſomuch as no Leaſe was made after ſuch Feoffment by the Feoffees to the Feoffor, to hold at their will: and ſome have ſaid the contrary, and that for two cauſes.

Sect. 463.

¶ UNe eſt, Que quād tiel feoffment eſt fait ſur confidence a perform la volunt del feoffor, il ſerra intendue per la Ley, que le feoffor doit maintenant occupier la terre a la volunt de ſes feoffees, & iſſint il eſt tiel manner de privity enter eux come hōe fait un feoffment as auters, & ils incontinent ſur le feoffm̄t, voylent & granteront que lour feoffor occupiera la Terre a lour volunt, &c.

ONe is, that when ſuch Feoffment is made upon confidence to perform the will of the Feoffor, it ſhall be intended by the law, that the Feoffor ought preſently to occupy the Land at the will of his Feoffees, and ſo there is the like kind of privity between them: As if a man make a Feoffment to others, & they immediately upon the Feoffment, will and grant, that their Feoffor ſhall occupy the land at their will, &c.

not the ſaid Statute execute either of them for the uncertainty. But if A. diſſeiſe one to the uſe of B. and A. doth bargain and ſell the land for money to C. C. hath an uſe, and here be two uſes of one land but of ſeveral natures, the one, viz. upon the bargain and ſale to be executed by the Statute, and the other not.

But ſince Littleton wrote all uſes are transferred by Act of Parliament (c) into poſſeſſion, ſo as the caſe which Littleton here puts is thereby altogether altered. Yet it is neceſſary to be known, what the Common law was before the making of the Statute, and may ſerve for the knowledge of the law in like caſe.

(c) 27 H. 8. cap. 10.

¶ *Incontinent ſur le Feoffment.* Quæ incontinenti fiunt in eſſe videntur.

¶ *A lour volunt, &c.* Here is implyed, every tenancy at will is at the will of both parties, as before in his proper place hath been ſhewn.

Sect. 464.

¶ UN auſ cauſe ils alliegeont, Que ſi tiel fre vault xl. ſ. per an. &c. donque tiel feoffor ſerra jure en aſſiſes & en auters enqueſts en pleas realx, & auxy en pleas perſonals de quel graund ſum que les Plaintifes voilent counter, &c. Et ceo eſt p̄ le Common Ley de la terre, Ergo ceo eſt pur un graund cauſe, & la cauſe eſt, que la Ley voet que tiels feoffors & lour Heires doient occupier, &c. & prender & enjoyer touts maner de profits, iſſues, & revenues, &c. ſicome les Tenements fueront lour meſmes ſans interruption de les Feoffees, nient obſtant tiel Feoffment. Ergo meſme la Ley done priviti perenter tiels Feoffors & Feoffees.

ANother cauſe they alleage, That if ſuch Land be worth forty ſhillings a year, &c. then ſuch Feoffor ſhall be ſworn in Aſſiſe and other enqueſts in Pleas reals, and alſo in Pleas perſonals, of what great ſum ſoever the Plaintiff will declare, &c. And this is by the common Law of the land, *Ergo* this is for a great cauſe, and the cauſe is, for that the Law will that ſuch Feoffors and their Heirs ought to occupy, &c. and take and enjoy all manner of profits, iſſues, and revenues, &c. as if the Lands were their own without interruption of the Feoffees, notwithſtanding ſuch Feoffment. *Ergo* the ſame Law giveth a privity between ſuch Feoffors and the Feoffees upon confidence,

¶ BY the Statute of 2. H. 5. cap. 3. Statut. 2. it is enacted, That in three caſes he that paſſeth in an Enqueſt, ought to have lands and Tenements to the value of forty ſhillings, viz. Firſt, Upon trial of the death of a man. Secondly, In Plea real between party and party. And thirdly, In Plea perſonal, where the debt or the Damages in the Declaration amount unto forty Marks. And it is worth the noting, That the Judges that were at the making of that Statute did conſtrue it by equity: for where the Statute ſpeaks in the disjunct the Debt or Damages, they adjudged that where the debt & damages amounted to forty Marks, that it was within the Statute. Forteſcue (f) ſaith, Ubi damna vel debitum in perſonalibus Actionibus non excedunt quadraginta Marcas monetæ Anglicanæ, hinc non requiritur, quod Juratores in Actionibus hujuſmodi tantum expendere poſſint: habebunt tamen terram vel redditum, ad valorem competentem, juxta diſcretionem Juſticiariorum, &c. And forasmuch as at the time of the making of this Statute, the greater part of the lands in England in thoſe troubleſome and dangerous times (when that unhappy controverſie between the Houſes of York and Lancaſter was begun) were in uſe. And the ſtatute was made

28. H. 8. Dy. fol. 9. Vide W. 2. cap. 38. Le. ſtat. de 21. E. 1 de Ju ratis ponendis in Aſſiſis, &c.

(f) 9 H. 5. fol. 5. Forteſc. cap. 15.

made to remedy a miſchief, that the Sheriff uſe to return ſimple men of ſmall or no underſtanding, and therefore the Statute provided, That he ſhould return ſufficient men, and albeit in law the land was the Feoffees, yet for that they had it but upon truſt, and Ceſty que uſe took the whole profits, as our Author here ſaith, and in equity and conſcience the land was his, therefore the Judges for advancement and expedition of Juſtice, extended the Statute (againſt the Letter) to Ceſty que uſe, and not to the Feoffees.

15.H.7.13 b. 13.H.7.7 b. 5.E.4.7.2.

(n) But note if a man hath a Free-hold pur terme dauter vie, or is ſeiſed in his wifes right, and is returned on a Jury, yet if after he be returned, Ceſty que vie, or his wife dye, he may be challenged, and ſo it is if after the return the lands be evicted.

(n) 3 H.6.33. Challeng. 19. 21.H.6.39.

les Feoffées ſur confidence, &c. pur quoy cauſes ils ont dit que tiels Releaſes faits per tiels feoffées ſur confidēce a lour feoffor ou a ſes heires, &c. iſſint occupant la tre, ſerra aſſets bon et ceſt le melior opinion come il ſemble, &c.

¶ Quære, car ceo ſemble nul Ley a ceſt jour.

&c. for which cauſes they have ſaid, That ſuch releaſes made by ſuch Feoffees upon confidence to their Feoffor or to his heirs, &c. ſo occupying the Lands, ſhall be good enough: and this is the better opinion, as it ſeemeth.

Quære, for this ſeemeth no Law at this day.

¶ *Et ceo eſt per le Common Ley.* Here three things are to be obſerved. Firſt, That the ſureſt conſtruction of a Statute is by the rule and reaſon of the Common law. Secondly, That uſes were at the Common law. Thirdly, That now ſeeing the Statute (g) of 27 H. 8. cap. 10. which hath been inacted ſince Littleton wrote, hath transferred the poſſeſſion to the uſe, this caſe holdeth not at this day, but this latter opinion before that Statute was good Law, as Littleton here taketh it.

(g) 27.H.8. cap.10.

¶ *Meſme la Ley done privity, &c.* Hereof it followeth, that when the law gives to any man any eſtate or poſſeſſion, the law giveth alſo a privity and other neceſſaries to the ſame: and Littleton concludeth it with an Illative, Ergo meſme la Ley done privity, which is very obſervable for a concluſion in other caſes.

And the (Quære) here made in the end of this Section is not in the Original, but added by ſome other, and therefore to be rejected.

27.El.cap.6.

Alſo ſince Littleton wrote, the ſaid Statute of 2. H. 5. is altered: for where that Statute limited forty ſhillings, now a later Statute hath raiſed it to four pounds, and ſo it ought to be contained in the Venire facias.

Pl.Com.352. b. in Delameres caſe, & 349. b. Lib.1.fol.121.122.127. 140. in Chudleyes caſe Lib 2.fol.58.78. Lib.6 fol.64. Lib.7.fol.13. & 34.

Nota, an Uſe is a Truſt or Confidence repoſed in ſome other which is not iſſuing out of the land, but as a thing collateral, annexed in privity to the eſtate of the land, and to the perſon touching the land, ſc. that Ceſty que uſe ſhall take the profit, and that the Terre-Tenant ſhall make an eſtate according to his direction. So as Ceſty que uſe had neither Jus in re, nor Jus ad rem, but only a confidence and truſt, for which he had no remedy by the Common law, but for breach of truſt his remedy was only by Subpœna in Chancery: and yet the Judges for the cauſe aforeſaid, made the ſaid conſtruction upon the ſaid Statute.

Forteſc. cap.25.26.27.

Now how Juzors ſhall be returned, both in Common Pleas, and alſo in Pleas of the Crown, and in what manner evidence ſhall be given to them, and how they ſhall be kept, until they give their verdict, you may read in Forteſcue, and therefore need not to be here inſerted.

Sect. 465.

Fler.Lib 5. cap.34. 15.H.7.14. 22.E.4.4.

¶ It is a certain rule that when a Releaſe doth enure by way of enlarging of an eſtate, that there muſt be privity of eſtate, as between Leſſor and Leſſee, Donor and Donee. For if A. make a Leaſe to B. for life, and the

¶ Item, Releales ſolonqz le matter en fait, aſtū foits ont lour effect per force denlarger leſtate celuy, a que

Alſo releaſes according to the matter in fact, ſometimes have their effect by force to enlarge the ſtate of him to

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le releaſe eſt fait. Sicome jeo leſſa certain terre a un home pur terme des ans, per force de que il eſt en poſſ. & puis jeo releſſa a luy tout le droit que jeo aye en le terre ſans pluis parolx mitter en le fait, & deliver a luy le fait, donques il ad eſtate ſolque pur terme de ſa vie. Et la cauſe eſt, pur ceo que quant le reverſion ou le remainder eſt en un home, le quel voile enlarger per ſon releas leſtate le tenant &c. il navera pluis greinder eſtate, mes en tiel manner & forme, ſicome tiel leſſor fuit ſeiſie en ſe, & voloit per ſon fait faire eſtate a uñ en certaine forme, & deliver a luy ſeiſin p force d meſme le fait: ſi en tiel fait de feoffement ne ſoit aſcun parol de enheritance, donques il ad forſqz eſtate pur terme de vie, & iſſint il eſt en tiels releaſes faits per eux en la reverſiõ ou en le remainder. Car ſi jeo leſſa la terre a un home pur terme d ſa vie, & puis jeo releſſa a luy tout mon droit, ſauns pluis dire & le releas, whom the releaſe is made. As if I let certain Land to one for term of years, by force whereof he is in poſſeſſion, and after I releaſe to him all the right which I have in the land without puting more words in the Deed, and deliver to him the Deed, then hath he an eſtate but for term of his life. And the reaſon is, for that when the reverſion or remainder is in a man who will by his releaſe enlarge the eſtate of the Tenant, &c. he ſhall have no greater eſtate, but in ſuch manner and form as if ſuch leſſor were ſeiſed in fee, & by his Deed will make an eſtate to one in a certain form, and deliver to him ſeiſin by force of the ſame deed: if in ſuch Deed of Feoffement there be not any word of Inheritance, then he hath but an eſtate for life, and ſo it is in ſuch Releaſes made by thoſe in the reverſion or in the remainder. For if I let land to a man for term of his life, and after I releaſe to him all my right without more ſaying in the releaſe, his eſtate is not

Leſſee maketh a Leaſe for years, and after A. releaſeth to the Leſſee for years, and his heirs, this releaſe is void to enlarge the eſtate, becauſe there is no privity between A. and the Leſſee for years.

If a man make a Leaſe for twenty years, and the Leſſee make a Leaſe for ten years, if the firſt leſſor doth releaſe to the ſecond leſſee and his heirs, this releaſe is void for the cauſe aforeſaid.

For the ſame cauſe, if the Donee in tail make a leaſe for his own life, and the Donor releaſe to the leſſee and his heirs, this releaſe is void to enlarge the eſtate.

And as privity is neceſſary in this caſe, ſo privity only is not ſufficient. As if an Infant make a leaſe for life, and the leſſee granteth over his eſtate with warranty, the Infant at full Age bringeth a Dum fuit infra ætatem, the Tenant voucheth his Grantor, who entreth into warranty, the demandant releaſeth to him and his Heirs; Here is privity in law, and a Tenancy in ſuppoſition of Law, and yet becauſe he in rei veritate hath no eſtate, it cannot enure to him by way of inlargement; for how can his eſtate be inlarged, that hath not any?

If a Tenant by the courteſie grant over his eſtate, yet he is tenant as to an Action of Waſte, Attornement, &c. and yet a releaſe to him and his Heirs cannot enure to enlarge his eſtate that hath no eſtate at all.

But if a man make a leaſe for years, the remainder for life, a releaſe by the leſſor to the leſſee for years, and to his Heirs, is good, for that he hath both a privity and an eſtate, and the releaſe alſo to him in the remainder for life and his heirs, is good alſo.

If I grant the reverſion of my Tenant for life, to another for life, now ſhall not I have an Action of Waſte: but if I releaſe to the Grantee for life, and his Heirs, now he hath

48 E. 3. 16. a per Perſay & Finchden. 41. E. 3. 17 a 7. E. 4. 17.

hath the Fee ſimple, and ſhall puniſh the waſte done after.

It is further to be obſerved, that to a releaſe that enureth by way of enlargement of the eſtate, there is not only required priuity, as hath been ſaid, and an eſtate alſo, but ſufficient words in Law, to raiſe or create a new eſtate. If a man make a leaſe to A. for term of the life of B. and after releaſe to A. all his right in the land by this, A. hath an eſtate for term of his own life, for a leaſe for term of his own life is higher in judgment of Law, than an eſtate for term of another mans life.

ſon eſtate neſt my enlarge. Mes ſi jeo releſſa a luy & a ſes heires, donques il ad fee ſimple, & ſi jeo releſſa a luy & a ſes heires de ſon corps engendres, donques il ad fee taile, &c. Et iſſint il covient de ſpecifier en le fait quel eſtate celuy a q̄ le releas eſt fait avera.

enlarged, but if I releaſe to him and to his Heirs, then he hath a Fee ſimple, and if I releaſe to him and to his Heirs of his body begotten, then he hath a fee tail, &c. And ſo it behoveth to ſpecifie in the Deed what eſtate he to whom the Releaſe is made ſhall have.

16.H.6. releaſe 45. 22.E.2.releaſe Statham

If a Feme-Covert be Tenant for life, a releaſe to the husband & his heirs is good, for there is both priuity and an eſtate in the husband, whereupon the releaſe may ſufficiently enure by way of enlargement (a) for by the intermariage he gaineth a Free-hold in his wives right.

(a) 13.H. 4. 6. Stanf. prer. 7. b. 18.E.4.5. 22, Aſſ.12. 21.H 7.19.10.H.6.11.

¶ *Tout le droit.* Vide Sect. 650.

¶ *Pur terme des ans.* So it is if a releaſe be made to tenant by Statute, Staple, or Merchant, or Tenant by Elegit, as hath been ſaid, and ſo likewiſe to Gardein in Chivalry which holdeth in for the value, by him in the reverſion of all his right in the land, by this a free-hold paſſeth for the life of him to whom the releaſe is made, for that is the greateſt eſtate that can paſs without apt words of Inheritance.

If a man make a leaſe for ten years, the remainder for twenty years, he in the remainder releaſeth all his right to the Leſſee, he ſhall have an eſtate for thirty years, for one Chattel cannot drown another, and years cannot be conſumed in years.

¶ *Mes ſi jeo Releaſe a luy & a ſes heires, &c.* Here it is to be obſerved, that when a releaſe doth enure by way of enlargement of an eſtate, no inheritance either in Fee ſimple, or Fee tail, can paſs without apt words of Inheritance.

9 El.Dier.263. 10.Eliz. Bendloes.Litt.lib.5.f.68 69. 70. b. 130. b.

But there is a diverſity between a releaſe that enureth by way of enlargement of the eſtate and by way of mitter leſtate, for when an eſtate paſſeth by way of mitter leſtate, there ſometime there need not any words of Inheritance. As if a joint eſtate be made to the husband and to his wife, and to a third perſon and to their heirs, the third perſon releaſeth all his right to the husband, this ſhall enure by way of mitter le ſtate, and not by way of enlargement of the eſtate, becauſe the husband had a Fee ſimple, and needeth not to have any words of Inheritance. So it is if the releaſe had been made to the Wife.

See before in the Chapter of Fee Simple.

(b) If there be three Joyntenants, and one releaſe to one of the other all his right, this enureth by way of Mitter leſtate, and paſſeth the whole Fee ſimple without theſe words (heirs.) But if there be two Joyntenants, and the one of them releaſe all his right to the other, this doth not to all purpoſes enure by way of mitter leſtate, for it maketh no degree, and he to whom the releaſe is made ſhall for many purpoſes be adjudged in from the firſt feoffor, & this releaſe ſhall veſt all in the other Joyntenant without theſe words (heirs.)

(b) 40.E.3.41. 46.E.3. 19.H.6. 33 H.6. 5.10. E.4.3.

10.E.4.3.b. 37.H 8 tit. alienation. Br. 31. 8.H. 4.8. 40. Aſſ. 5. 9.Eliz. Dier. 263.

But if there be two Copartceners, and the one releaſe all his right to the other, this ſhall enure by way of mitter leſtate, and ſhall make a degree, and without theſe words (heirs) ſhall paſs the whole Fee ſimple. And it is to be obſerved, that to Releaſes that enure by way of mitter leſtate, there muſt be priuity of eſtate at the time of the releaſe.

If two Copartceners be of a rent, & the one of them take the Tenant to husband, the other may releaſe to her, notwithſtanding the rent be in ſuſpence, & it ſhall enure by way of mitter leſtate, and ſhe may releaſe alſo to the tenant, & that ſhall enure by way of extinguiſhment: but if ſhe releaſe to her ſiſter and to her husband, it is good to be ſeen how it ſhall enure.

Vid.Littl. fo'.68 69.

Littleton having now ſpoken of releaſes that enure by way of enlargement of the eſtate, and of Releaſes that enure by way of mitter leſtate, proceedeth to releaſes that enure by way of mitter le droit. So as of that which hath been and ſhall be ſaid by our Author of releaſes, it appeareth that ſome do enure by way of Enlargement of eſtate, ſome by way of mitter leſtate, ſome by way of mitter le droit, by way of Entry and Feoffment, and ſome by extinguiſhment.

S.ſ.

Sect. 466.

¶ Item, aſcuns foits Releales urera de mitter & veſter le droit celuy que fait le Releale, a celuy a que le releas eſt fait. Sicome un home eſt diſſeiſie, & il releſſa a ſon diſſeiſor tout le droit que il ad, en ceſt cas le diſſeiſor ad ſon droit, iſſint que lou ſon eſtate advant fuit tortious, ore per tiel releas il eſt fait loyal & droiturel.

Alſo ſometimes Releaſes ſhall enure de mitter and veſt the right of him which makes the Releaſe to him to whom the Releaſe is made. As if a man be diſſeiſed, and he releaſeth to his diſſeiſor all his right; in this caſe the diſſeiſor hath his right, ſo as where before his ſtate was wrongful, now by this releaſe it is made lawful and right.

¶ *Et il releſſa a ſon diſſeiſor, &c.* This releaſe ſo putteth the right of the diſſeiſee to the Diſſeiſor, that it changeth the quality of the eſtate of the Diſſeiſor, for where his eſtate was before wrongful, it is by this releaſe made lawful. But how far, and to what reſpects his eſtate is changed, ſhall be ſaid hereafter in this Chapter in his proper place.

Sect. 467.

¶ Mes hic nota, que quãt home eſt ſeiſie en ſee ſimple, dalcun terres ou tenements, & un auter voile releaſer a luy tout le droit que il ad en meſmes les tenãts, il ne beſoigne de parler de les heires celuy a q̃ le releas eſt fait, pur ceo que il avoit ſee ſimple al temps de releas fait. Car ſi releas fuit fait a luy pur un jour, ou pur un heure, ceo ſerroit auxy fort a luy & ley, ſicome il uſt releas a luy & a ſes heires. Car quant ſon droit fuit ale de luy a un faits per ſon releas ſans aſcun condition

But there note, that when a man is ſeiſed in Fee ſimple of any lands or tenements, and another will releaſe to him all the right which he hath in the ſame tenements, he needeth not to ſpeak of the Heirs of him to whom the releaſe is made, for that he hath a Fee ſimple at the time of the Releaſe made: for if the releaſe was made to him for a day or an hour, this ſhall be as ſtrong to him in law, as if he had releaſed to him and his Heirs. For when his right was once gone from him by his releaſe without any con-

¶ *Il ne beſoigne a parler de les Heires, &c.* And the reaſon of Littleton hereof is for that the Diſſeiſor hath a fee ſimple at the time of the releaſe made. And this appeareth by that which hath been ſaid before, ſo as regularly he that hath a fee ſimple at the time of the releaſe made of a right, &c. needeth not ſpeak of his heirs.

¶ *Car ſi releaſe fuit fait a luy pur un jour, &c.* For the diverſity is between a releaſe of part of the eſtate of a right, and between a releaſe of a right in part of the land. And therefore Littleton here ſaith, that a Releaſe of a right for a day or an hour is of as good force, as if he had releaſed his right to him and his heirs. But if a man be diſſeiſed of two acres, he may releaſe his right in one of them, and yet enter into the other. Vid. 6. E. 3. 17. 12. E. 4. tit. Diſcent, F. 29.

¶ *Sans aſcun condition,*

tion, &c. Herein is implyed two diverſities, firſt between the quantity of the eſtate in a Right, and the quality thereof, for albeit the diſſeiſee cannot releaſe part of the ſtate, as hath been ſaid, yet may he releaſe his right upon condition, as here it appeareth by Littleton, (c) and it agreeth with our Books.

gr. a celuy que ad fée ſimple, il eſt ale a touts jours.

dition, &c. to him that hath the fee ſimple, it is gone for ever.

(c) 4. E. 2 Releaſe 50. 43 Aſſ. 12. 17. Aſſ. 2. 31 Aſſ. 13. 21. H. 24.

Alſo here is another diverſity between a right, whereof Littleton putteth his caſe, which is favoured in law, and a Condition created by the party which is odious in law, for that it defeateth eſtates. And therefore if a Condition be releaſed upon Condition, the releaſe is good, and the Condition void.

What things may be done upon Condition, is too large a matter to handle in this place, our Author having treated of Conditions before: only to give a touch of ſome things omitted there, ſhall ſuffice. An expreſs Manumiſſion of a Villein cannot be upon condition, for once free in that caſe, and ever free; alſo an Attornment to a Grantee upon condition, the condition is void becauſe the Grant is once ſetled. But this is to be underſtood of a Condition ſubſequent, and not of a Condition precedent, for in both thoſe caſes the Condition precedent is good. But Letters Patents of Denization made to an Alien, may be either upon condition ſubſequent or precedent, and ſo may the King make a Charter of pardon to a man of his life upon condition as is abovеſaid.

Rot. Parliament 18. H. 6. num. 29. Ap. Gwilliams caſe. 10. E. 3. c. 2. 3 H. 7. f. 6.

Sect. 468.

¶ Mes lou home ad un reverſion en fée ſimple, ou un remainder en fée ſimple, al temps de releas fait, la il poyle releaſer al tenant pur terme dans, ou pur terme de vie, ou al tenant en le taile, il convient a determiner leſtate que celuy a que le releas eſt fait avera per force de meſme le releas, pur ceo que tiel releas enurera pur enlarger leſtate de celuy, a que le releas eſt fait.

But where a man hath a reverſion in fee ſimple, or a remainder in fee ſimple at the time of the releaſe made, there if he will releaſe to the tenant for years, or for life, or to the tenant in tail, he ought to determine the eſtate, which he to whom the releaſe is made ſhall have by force of the ſame releaſe, for that ſuch releaſe ſhall enure to enlarge the ſtate of him, to whom the releaſe is made.

Of this ſufficient hath been ſaid before.

Sect. 469.

¶ Mes auterment eſt lou home ad forſque droit a la terre, & nad riens en le revertion ne en le remainder en fait. Car ſi tiel home releſſa tout ſon droit a un que eſt teſt de le franktenement, tout ſon droit eſt ale, coment que nul mention ſoit fait de les heires celuy a que le releas eſt fait. Car ſi ceo leſſa terres a un home pur terme

But otherwiſe it is where a man hath but a right to the Land, and hath nothing in the reverſion nor in the remainder in Deed. For if ſuch a man releaſe all his right to one which is tenant of the freehold, all his right is gone, albeit no mention be made of the Heirs of him to whom the releaſe is made: for if I let lands to one for term of his life, if I after releaſe

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de ſa vie, ſi jeo puis releaſe a luy pur enlarger ſon eſtate, il covient q̄ jeo releſſa a luy & a ſes heires de ſon corps engender, ou a luy & a ſes heires, ou per tiels pols: & aver & tēn a luy & a ſes heirs de ſon corps engendres, ou a les heires males de ſon corps engendres, ou tiels ſemblables eſtates, ou autrement il nad pluis grand eſtate q̄ il avoit advant.

to him to enlarge his eſtate, it behoveth that I releaſe to him and to his Heirs of his body engendred, or to him and his Heirs, or by theſe words: to have and to hold to him and to his Heirs of his body engendred, or to the Heirs Males of his body engendred, or ſuch like eſtates, or otherwiſe he hath no greater eſtate than he had before.

¶ A *Un que eſt Tenant de Franktenement.* Here it appeareth, that to a Releaſe of a right, made to any that hath an eſtate of Free-hold in Deed or in Law, no privity at all is requiſite. As if a Diſſeiſor make a leaſe for life, if the Diſſeiſee releaſe to the leſſee, this is good, and directly within the rule of Littleton, becauſe the leſſee hath an eſtate of Free-hold, albeit there be no privity. And ſo it is if a Diſſeiſor make a leaſe to A. and his heirs, during the life of B. and A. dieth, a Releaſe by the Diſſeiſee to his Heir, before he hath actually enter is good.

Sect. 470.

¶ Mes ſi mon ten̄ a terme de vie, leſſa meſme la terre ouſter a un auter pur terme de vie de ſon Leſſee, le Remainder a un auter en Fee, ore ſi jeo releſſa a celuy a que mon Tenant leſſaſt pur terme de vie, ceo terra barre a touts jours, coment que nul mention ſoit fait de ſes heires, pur ceo que al temps de releaſe fait jeo aboy nul reverſion, mes tantſolement un droit daver la reverſion: car p̄ tiel leas, & le remainder ouſter que mon Ten̄t fit en ceo cas mon reverſion fuit diſcontinue, &c. & tiel releas urera a celuy ē l' remainder, daver advantage de ceo auſibien come al Tenant a terme de vie.

BUt if my Tenant for life letteth the ſame Land over to another for term of the life of his leſſee, the remainder to another in Fee, now if I releaſe to him to whom my Tenant made a Leaſe for term of life, I ſhall be barred for ever, albeit that no mention be made of his Heirs, for that at the time of the releaſe made I had no reverſion, but only a right to have the reverſion. For by ſuch a releaſe and the remainder over which my Tenant made in this caſe my reverſion was diſcontinued, &c. and this releaſe ſhall enure to him in the remainder to have advantage of it aſwell as to the Tenant for term of life.

¶ Littleton having before ſpoken of releaſes, which enure by way of enlargement, by way of Mitter l'eſtate, & by way of Mitter le droit, here ſpeaketh of a releaſe of a right which in ſome reſpects enureth by way of Extinguiſhment, as in this caſe which Litl. here putteth, the releaſe to the leſſee of the leſſee doth not enure by way of Mitter le droit, for then ſhould he have the whole right, but as it were by way of extinguiſhment, in reſpect of him, that made the releaſe, & that it ſhall enure to him in the remainder, which is a quality of an inheritance extinguiſhed,

extinguiſhed. But yet the right is not extinct in deed, as ſhall be ſaid hereafter in this Chapter.

¶ *Mon reverſion ſunt diſcontinue, &c.* Here Diſcontinue is in a large ſenſe taken for deveſted, though the entry of the leſſor be not taken away, which is implyed in this (&c.)

Sect. 471.

¶ *Sont come un Tenant en Ley.* Which is certainly true in this caſe of Remainder, and ſo it is alſo in caſe of a Reverſion, as if a Diſſeiſor make a leaſe for life, and the Diſſeiſee doth releaſe all his right to the leſſee, this releaſe ſhall enure to him in the reverſion, albeit they have ſeveral eſtates, as hath been ſaid, which is implyed in this (&c.)

¶ Car a cel intent le Tenant a terme de vie & celuy en le remainder ſont ſicome un Tenant en Ley, & ſont ſicome un Tenant fuit ſole ſeiſie en ſon demeſne come de fee al temps de tiel Releaſe fait a luy, &c.

For to this intent the Tenant for term of life, and he in the Remainder, are as one Tenant in Law, and are as if one Tenant were ſole ſeiſed in his Demeſne as of Fee at the time of ſuch Releaſe made unto him, &c.

But if a Diſſeiſor make a leaſe for life, the Remainder in fee, albeit they to ſome purpoſes (as here is ſaid) are as one Tenant in law, yet if the Diſſeiſee releaſe all Actions to the Tenant for life, after the death of the Tenant for life, he in the remainder ſhall not take benefit of this releaſe, for it extended only to the Tenant for life, as it is holden(a) in Edward Althams caſe. And in like manner, if the diſſeiſor make a leaſe for life, and the diſſeiſee releaſe all Actions to the leſſee, this inureth not to him in the reverſion, and ſo our Author is to be underſtood of a releaſe of Rights, and not of a releaſe of Actions, to the Tenant for life, as to or for the benefit of him in the remainder or reverſion.

(a) Lib. 8. fol. 148. Edw. Althams caſe.

Sect. 472.

¶ *Si home ſoit diſſeiſie, &c.* This is to be underſtood where Tenant in Fee ſimple is diſſeiſed and releaſe: for if Tenant for life be diſſeiſed by two, and he releaſeth to one of them, this ſhall inure to them both, for he to whom the releaſe is made, hath a longer eſtate than he that releaſeth, and therefore cannot inure to him alone, to hold out his companion, for then ſhould the Releaſe inure by way of entry and grant of his eſtate, and conſequently the Diſſeiſor to whom the Releaſe is made ſhould become Tenant for life, and the Reverſion reveſted in the Leſſor, (b) which ſtrange tranſmutation and change of eſtates in this caſe the law will not ſuffer. But if leſſee for years be ouſted, and he in the rever-

22. H. 6. 41.

(b) 13. E. 4. tit. Diſcent. 829.

¶ Item, ſi home ſoit diſſeiſie per dux ſi releſſa, a un deux, il tiendra ſon compaignion hors de Terre, & per tiel Releaſe il avera le ſole poſſeſſion & eſtate en la Terre. Mes ſi un diſſeiſor enfeoffa deux en Fee, & l' Diſſeiſee releſſa a lun des Feoffees, ceo urera a ambideux de les Feoffees, & la cauſe de diverſity enſ ceux deux caſes eſt aſſets pregnant. ¶ Pur

Alſo if a man be diſſeiſed by two, if he releaſe to one of them, he ſhall hold his Companion out of the Land, and by ſuch Releaſe he ſhall have the ſole poſſeſſion and eſtate in the Land. But if a Diſſeiſor infeoffe two in fee, and the Diſſeiſee releaſe to one of the feoffees, this ſhall inure to both the feoffees, & the cauſe of the diverſity between theſe two caſes is pregnant e-

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ceo que ils veignont eins per feoffment, & lauters per tort, &c.

nough. For that they come in by Feoffment, and the others by wrong, &c.

ſion diſſeiſed, and the leſſee releaſe to the Diſſeiſor, the Diſſeiſee may enter, for the term for years is extinct and determined. But otherwiſe it is in caſe of a leſſee for life, for the Diſſeiſor hath a Free-hold, whereupon the releaſe of Tenant for life may enure, but the diſſeiſor hath no term for years, whereupon the releaſe of the leſſee for years may enure.

And ſo it is if donee in Tail be diſſeiſed by two, and releaſeth to one of them, it ſhall enure to them both. But if the Kings Tenant for life be diſſeiſed by two, and he releaſeth to one of them, he ſhall hold out his companion, for the diſſeiſor gained but the eſtate for life. So if two Joyntenants make a leaſe for life, and after do diſſeiſe the Tenant for life, and he releaſe to one of them, he ſhall hold out his companion, for the diſſeiſin was but of an eſtate for life.

If Tenant for life be diſſeiſed by two, and he in the reverſion and tenant for life joyn in a Releaſe to one of the Diſſeiſors, he ſhall hold his companion out, and yet it cannot enure by way of Entry and Feoffment. But if they ſeverally releaſe their ſeveral rights, their ſeveral releaſes ſhall enure to both the Diſſeiſors.

But here in Littletons caſe, where tenant in Fee ſimple is diſſeiſed by two, and releaſeth to one of them, this for many purpoſes enureth by way of Entry and Feoffment, and therefore he to whom the releaſe is made ſhall hold out his companion, and be made ſole Tenant of the Fee ſimple. And this holdeth not only in caſe of a Diſſeiſin, but alſo in caſe of Intruſion and Abatement: but neceſſarily he to whom the releaſe is made muſt be in by wrong, and not by Title.

If two men do gain an Advowſon by uſurpation, and the right Patron releaſeth to one of them, he ſhall not hold out his companion, but it ſhall enure to them both, for ſeeing their Clerk came in by admiſſion and inſtitution, which are judicial Acts, they are not meerly in by wrong: for an uſurpation ſhall cauſe a Remitter, as it appeareth in F. N. B. 31. m.

But if a leaſe for life be made, the remainder for life, the remainder in fee, and he in remainder for life diſſeiſeth the tenant for life, and then tenant for life dieth, the diſſeiſin is purged, and he in the remainder for life hath but an eſtate for life. And ſo note a diverſity where the particular eſtate for life is precedent, and when ſubſequent. 19 H. 6. 22. 38. H. 6. 28. Caſe de occupant.

Where our author putteth his caſe of one diſſeiſed, put the caſe that two Joyntenants in fee be diſſeiſed by two, and one of the diſſeiſees releaſe to one of the diſſeiſors all his right, he ſhall not hold out his companion, becauſe the releaſe is but of the moyty, without any certainty. If a man be diſſeiſed by two women, and one of them take husband, and the diſſeiſee releaſe to the husband, this ſhall enure to the advantage of both the Diſſeiſors, becauſe the husband was no wrong doer, but in a manner in by title.

¶ *Il avera le ſole poſſeſſion & eſtate.* If two diſſeiſors be, and they make a leaſe for life, and the diſſeiſee releaſe to one of them, this ſhall enure to them both, and to the benefit of the other for life alſo: for he cannot by the releaſe have the ſole poſſeſſion and eſtate, for part of the eſtate is in another.

And ſo it is (as it ſeemeth) if the diſſeiſors make a leaſe for years, and the diſſeiſee releaſe to one of them, this ſhall enure to them both, for by the releaſe he cannot have the ſole poſſeſſion And it appeareth by Littleton, That he muſt have the ſole poſſeſſion, and hold his companion out. But the Mortgagee upon condition, having broken the condition, is diſſeiſed by two, the Mortgagor having title of Entry for the condition broken, releaſe to the one diſſeiſor, albeit they be in by wrong, yet the releaſe ſhall enure to them both for two cauſes: Firſt, For that they are not wrong doers to the Mortgagor, but to the Mortgagee, and by Littletons caſe it appeareth, That wrong is done to him that made the releaſe. Secondly, That he that make the releaſe hath but a title by force of a condition, and Littletons caſe is of a right. Like Law of an Entry for Mortmain, or a conſent to raviſhment, &c.

¶ *Mes ſi un Diſſeiſor infeoffa deux, &c.* And the reaſon of this diverſity is, 21. H. 6. 41. For that the Feoffees are in by title, and are preſumed to have a Warranty, which is much favoured in law, and the diſſeiſors are meerly in by wrong. And the equity of the Law doth preſerve in this caſe, the benefit of the eſtranger to the releaſe, coming in by one joynt Title.

¶ *Pur ceo que ils veignont eins per Feoffment, & lauters per Tort.* This is of a new addition, and not in the original, and therefore I paſs it over.

Sect.

Sect. 473.

¶ Item ſi jeo ſue diſſeiſie, & mon Diſſeiſor eſt diſſeiſie, ſi jeo releaſe a le Diſſeiſor de mon Diſſeiſor, jeo navera a unque aſſ. ne entra ſur le Diſſeiſor pur ceo que ſon Diſſeiſor ad mon droit per mon releaſe, &c. Et ſi-ſint il ſemble en tiel caſe, ſi ſoyent xx. diſſeiſors, cheſcun apres auter, & jeo releſſa a le darreine Diſſeiſor, celuy Diſſeiſor barrera touts les auters de lour actions & lour titles. Et la cauſe eſt, come il ſemble, pur ceo que en mults caſes, quant un home ad loyal title dentre, coment que il nentra pas, il deſeatera touts meane titles per ſon releaſe, &c. Mes ceo neſt my en cheſcun caſe, come ſera dit apres.

ALſo if I be diſſeiſed, and my Diſſeiſor is diſſeiſed, if I releaſe to the diſſeiſor of my diſſeiſor, I ſhall not have an aſſiſe nor enter upon the diſſeiſor, becauſe his diſſeiſor hath my right by my releaſe, &c. And ſo it ſeemeth in the caſe if there be xx. diſſeiſed one after another, and I releaſe to the laſt Diſſeiſor, this Diſſeiſor ſhall bar all the others of their actions and their titles. And the cauſe is, as it ſeemeth, for that in many caſes when a man hath lawful title of entry, although he doth not enter, he ſhall defeat all mean titles by his releaſe, &c. but this holds not in every caſe, as ſhall be ſaid hereafter.

¶ Here it is to be obſerved, that a releaſe by one whoſe Entry is lawful to him that is in by wrong, ſhall purge and take away all mean Eſtates and Titles. And where our Author firſt putteth his caſe of two Eſtates by wrong, and after of twenty Diſſeiſins, all Eſtates be wrong.

21. H. 6. 41. 11. H. 4. 33. 9. H. 7. 25. 2. E. 4. 16. 21. E. 4. 78. 12. Aſſ. 22. Vide 3. H. 6. 38.

If A. diſſeiſe B. who enfeoffeth C. with warranty, who enfeoffe D. with warranty, and E. diſſeiſeth D. to whom B. the firſt Diſſeiſee releaſeth, this doth defeat all the mean Eſtates and Warranties, becauſe the releaſe of B. is made to a Diſſeiſor, and his Entry is lawful.

Sect. 474.

¶ Item *ſi mon Diſſeiſor leſſa, &c.* If the Diſſeiſor make a Leaſe for life, and the Leſſee maketh a Feoffment in fee, and the diſſeiſee releaſeth to the feoffee, the Diſſeiſor ſhall not enter upon the feoffee, for albeit the releaſe to one joynt Feoffee of a Diſſeiſor, as hath been ſaid, ſhall not exclude the other yet a releaſe to the Feoffee of a Tenant for life in this caſe ſhall take away the Entry of the Diſſeiſor for the alienation which was made to his

¶ Item, ſi mon diſſeiſor leſſa l'es tenements dont il moy diſſeiſiſt a un auter home pur terme de vie, & puis le Tenant a terme de vie aliena en fee, & jeo releſſa al alienee, &c. donque mon Diſſeiſor ne poit enter, Cauſa qua ſupra, coment a que un

ALſo if my diſſeiſor letteth the tenements whereof he diſſeiſed me to another for term of life, and after the Tenant for term of life alieneth in fee, and I releaſe to the Alienee, &c. then my diſſeiſor cannot enter, *cauſa qua ſupra*, albeit at that one

ſoits lalienation fuit a ſon diſenheritance, &c.

time the alienation was to his diſinheritance, &c.

Diſinheritance, he having the Inheritance by diſſeiſin, ſo as he could have no warranty annexed to it, and tenant for life hath forfeited his eſtate. But if the entry of the Diſſeiſee were not lawful, it is otherwiſe. As if a man make a leaſe for life, and the leſſee for life is diſſeiſed and that diſſeiſor is diſſeiſed, and he in the reverſion releaſeth to the ſecond diſſeiſor, the firſt diſſeiſor ſhall enter upon the ſecond Diſſeiſor, and his entry is lawful, and if the leſſee for life re-enter, he ſhall leave the reverſion in the firſt diſſeiſor and the cauſe is, for that the entry of the diſſeiſor at the time of the releaſe made was not lawful. And the Book of (m) 9. H. 7. 25. is to be intended of an Eſtate tail mutatis mutandis. (m) 9.H.7.25.

If in the caſe aforeſaid, the diſſeiſor make a leaſe for life, and the leſſee infeoffeth two, and the Diſſeiſee releaſe to one of the Feoffees, this ſhall bar the Diſſeiſor, as hath been ſaid, but yethe ſhall not hold out his companion for the cauſe aforeſaid.

Sect. 475.

¶ Item, ſi home ſoit diſſeiſie, le ql ad iſſu deins age & moruſt, & eſteant le iſſu deins age, le diſſeiſor moruſt ſeiſie, & la terre diſcendiſt a ſõheire, & un eſtrange abate, & puis le iſſu le diſſeiſée quant il vient a ſon plein age, releſſa tout ſon droit a labator, en ceſt caſe lheire le diſſeiſor navera aſſiſe de Mordanceſter envers labator mes ſerra bar, pur ceo que labator ad le droit del iſſu le diſſeiſée p ſon releas, & lentry le iſſu fuit congeable, pur ceo que il fuit deins age al temps del diſcent &c.

ALSO if a man be diſſeiſed who hath a ſon within age and dieth, and the ſon being within age the diſſeiſor dieth ſeiſed, and the land deſcend to his Heir, and a ſtranger abate, and after the ſon of the Diſſeiſee when he commeth to his full age releaſeth all his right to the abator, in this caſe the Heir of the diſſeiſor ſhall not have an Aſſiſe of Mordanceſter againſt the abator, but ſhall be barred becauſe the abator hath the right of the ſon of the Diſſeiſee by his releaſe, and the entry of the ſon was congeable, age at the time of the

for that he was within Diſcent, &c.

¶ The reaſon of this caſe is for that the Entry of the Heir is congeable, and the Abator is in the land by wrong.

¶ *Abate.* Is both an Engliſh and French word, and ſignifieth in his proper ſenſe to Diminiſh, or Take away, as here by his Entry he Diminiſheth and Taketh away the Free-hold in Law deſcended to the Heir, and ſo it is ſaid to Abate an account ſignifying Subtraction or withdrawing, &c. and to Abate the courage of a man. In another ſenſe it ſignifieth to Proſtrate, Beat down, or Overthrow, as to Abate Caſtles, Houſes, and the like, and to Abate a Writ, and hereof cometh a word of Art, Abatamentum, which is an entry by Interpoſition. Now the difference inter Diſſeiſinam, Abatamentum, Intruſionem, Deforciamentum, & Uſurpationem, & Purpreſturam, is this. Vet.N.B.115.Britton, cap. 51. Bracton lib.4.cap.2. F.N.B.20.3.f.W.1.c.17.

A Diſſeiſin is a wrongful putting out of him that is actually ſeiſed of a Freehold. An Abatement is when a man died ſeiſed of an eſtate of Inheritance, and between the death and the entry of the Heir, an eſtranger doth interpoſe himſelf, and Abate.

Intruſion firſt properly (n) is when the Anceſtor died ſeiſed of any eſtate of Inheritance tenant upon an eſtate for life, and then tenant for life dieth, and between the death and the entry of the heir an eſtranger doth interpoſe himſelf and intrude. (n) F.N.B.203, Fleta lib.4. cap.30.

Secondly, (o) He that entreth upon any of the Kings Demeſnes, and taketh the profits, is ſaid to Intrude upon the Kings poſſeſſion. (o) Pl. Com. caſe de mynes.

(p) F.N.B 141. f. g. h.

Thirdly, (p) When the Heir in ward entreth at his full Age without ſatisfaction for his marriage, the Writ ſaith, quod intruſit.

Deforciamentum comprehendeth not only theſe aforeſaid, but any man that holdeth land whereunto another man hath right, be it by diſcent or purchaſe, is ſaid to be a Deforceor. Uſurpation hath two ſignifications in the Common law, one when an eſtranger that no right hath, preſenteth to a Church, and his Clerk is admitted and inſtituted, he is ſaid to be an uſurper, and the wrongful Act that he hath done is called an uſurpation.

Secondly, When any ſubject doth uſe without lawful warrant, Royal Franchiſes, he is ſaid to uſurp upon the King thoſe Franchiſes. Purpreſtura or Pourpreſtura a Purpreſture; (q) Purpreſtura eſt, &c. generaliter quoties aliquid fit ad nocumentum regii tenementi, vel regiæ viæ (vel aliquarum publicarum) vel civitatis, &c. And becauſe it is properly when there is a houſe builded, or an incloſure made of any part of the Kings Demeſnes, or of an high way, or a common ſtreet or publick water, or ſuch like publick things, it is derived of the French word Pourpris, which ſignifieth an Incloſure, but ſpecially applyed, as is aforeſaid, by the Common law.

(q) G'anvil. lib. 9. c. 11. Britton. fol. 28. 29.

Sect. 476.

9. H. 7. 25.

¶ HEre the Entry of the diſſeiſee is congeable, and yet the releaſe doth not avoid the condition, becauſe the Feoffee is in by title, as hath been ſaid, and may have a warranty. And herein our Author expreſſeth a diverſity between a Condition in law, and a Condition in Deed for in the caſe before when the Diſſeiſee releaſeth to the Feoffee of the Tenant for life, the Condition in law is taken away, but otherwiſe it is in this caſe of a Condition in Deed.

¶ Mes ſi home ſoit diſſeiſe, & le diſſeiſor fait feoffment ſur condition, reſtaſcabotr, de rendre a luy certaine rent, & pur default de payment un reentre, &c. ſi le diſſeiſee releſſa al feoffée ſur condition uncore ceo nemeſma leſtate le feoffée ſur condition, car nient obſtant tiel releas, uncore ſon eſtate eſt ſur condition ſicome il fuit devant.

¶ Et cum hoc concordat opinio omnium Juſticiariorum, P. 9. H. 7. ¶.

But if a man be diſſeiſed and the diſſeiſor maketh a feoffement upon condition, *viz.* to render to him a certain rent, and for default of payment a re-entry, &c. if the diſſeiſee releaſe to the Feoffee upon condition, yet this ſhall not amend the eſtate of the Feoffee upon condition, for notwithſtanding ſuch releaſe, yet his eſtate is upon condition as it was before.

¶ And with this agreeth the opinion of all the Juſtices, *Paſch.* 9. *H.* 7.

Lib. 1. f. 147. Mayowes caſe.

But if the Feoffee upon Condition make a Feoffment in Fee over without any condition, and the diſſeiſee releaſe to the ſecond Feoffee, the condition is deſtroyed by the releaſe before the Condition broken or after. For the ſtate of the ſecond feoffee was not upon any expreſs Condition, as Littleton here putteth his caſe, and he may have advantage of the releaſe, becauſe it is not againſt his own proper acceptance, as Littleton ſpeaketh in the next Section.

But if it be a wrongful title, ſuch a title is taken away by a releaſe, as if A. diſſeiſed B. to the uſe of C. B. releaſe to A. this ſhall take away the agreement of C. to the Diſſeiſin, becauſe it ſhould make him a wrong doer, as if the diſſeiſor be diſſeiſed, the diſſeiſee releaſeth to the ſecond diſſeiſee, this taketh away the right the firſt Diſſeiſor had againſt the ſecond, and a reſurion of an eſtate gained by wrong ſhall never defeat an eſtate ſubſequent gained by right, againſt a ſingle opinion, not affirmed by any other in one of our Books.

14. H. 8. 18. per Port.

Sect. 477.

¶ ET *le Diſſeiſor grant un Rent-charge, &c.* Here is implyed Commons or any other

¶ EN meſme le manner eſt lou home ſoit diſſ. de certeine terre, & le diſſei-

IN the ſame manner it is where a man is Diſſeiſed of certain lands and the diſſeiſor, for

ſor grant un rent charge hors de meſm la terre, &c. coment que apres le diſſeiſee releſſa al diſſeiſor, &c. uncore le rent charge demurt en ſa force. Et la cauſe en ceux deux caſes eſt ceo, que home navera advantage per tiel releas q̃ ſera encounter ſon proper acceptance, & encounter ſon grant demeſne: & coment q̃ aſcuns ont dit que ſi un lentre de home eſt congeable ſur un tenant ſil releaſſe a meſme le tenant, que ceo abaileroit a le tenant, ſicome il uſt enter ſur le tenant, & puis luy enfeoffa, &c. ceo neſt pas voier en chescun cas. Car en le primer cas de ceux deux avauntdits caſes, ſi le diſſeiſee uſt enter ſur le feoffee ſur condition, & puis luy enfeoffa, donques eſt le condition tout defeat & avoid. Et iſſint en le ſecond caſe, ſi le diſſeiſee entraſt & enfeoffa celuy que granta l'rent charge, donques eſt le rent charge anient et avoid, mes il neſt pas void per aſcun tiel releas ſans entry fait, &c.

grant a rent-charge out of the ſame land, &c. albeit the diſſeiſee doth afterwards releaſe to the Diſſeiſor, &c. yet the Rent-charge remains in force. And the reaſon in theſe two caſes is this, that a man ſhall not have advantage by ſuch releaſe, which ſhall be againſt his proper acceptance, & againſt his own grant. And albeit ſome have ſaid, that where the entry of a man is Congeable upon a Tenant if he releaſeth to the ſame Tenant, that this ſhall avail the Tenant, as if he had entred upon the Tenant and after enfeoffed him, &c. this is not true in every caſe, for in the firſt caſe of theſe two caſes aforeſaid, if the Diſſeiſee had entred upon the Feoffee upon condition, and after enfeoffed him, then is the Condition wholly defeated and avoided. And ſo in the ſecond caſe if the diſſeiſee entreth and enfeoffeth him who granted the Rent-charge, then is the rent-charge taken away and avoided, but it is not void by any ſuch releaſe without entry made, &c.

profit out of the lands. And the reaſon is becauſe he ſhall not avoid his own grant by a releaſe, he himſelf hath acquired ſince the grant, but if the diſſeiſor in that caſe be diſſeiſed, and the Diſſeiſee releaſe to the ſecond diſſeiſor he ſhall avoid it, as by that which hath been ſaid, Sect. 473. appeareth. So likewiſe if A. and B. be joynt Diſſeiſors, and B. grant a Rent-charge, and the Diſſeiſee releaſe to A. all his right, A. ſhal avoid the Rent-charge becauſe it was not granted by him, and ſo not within the reaſon of our Author.

If there be two Femes joynt Diſſeiſors, and the one taketh husband, and the diſſeiſee releaſe to the other, ſhe is ſole ſeiſed, and ſhall hold out the husband and wife.

If two Diſſeiſors be, and they infeoffe another, and take back an eſtate for life or in fee, albeit they remain Diſſeiſors to the diſſeiſee as to have an aſſiſe againſt them, yet if he releaſe to one of them, he ſhall not hold out his companion, becauſe their ſtate in the land is by feoffment.

If there be two Diſſeiſors and they be diſſeiſed, and they releaſe to their Diſſeiſor, and after diſſeiſe him, and then the diſſeiſee releaſe to one or both of them, yet the ſecond Diſſeiſor ſhall re-enter, for they ſhall not hold the land againſt their own releaſe; for Littleton here ſaith, that they ſhall not avoid their own grant, and by like reaſon they ſhall not avoid their own releaſe, & ſic de ſimilibus.

¶ *Come ſil uſt enter ſur le tenant & luy enfeoffe.* Here is another kind of releaſe, viz. a releaſe which enureth by way of entry and feoffment, for if a Diſſeiſee releaſe to one of the diſſeiſors to ſome purpoſe this ſhall enure by way of entry and feoffment, viz. as to hold out his companion. But as to a Rent-charge granted

red by him it ſhall not enure by way of entry and feoffment, for if the diſſeiſee had entred and enfeoffed him, the Rent-charge had been avoided. But it is a certain rule, that when the entry of a man is congeable, and he releaſeth to one that is in by title, (as hereto the feoffee upon condition is) it ſhall never enure by way of entry and feoffment, either to avoid a condition with which he accepted the Land charged, or his own grant, or to hold out his Companion.

And where it appeareth by our Author that Acts done by the Diſſeiſor ſhall not be avoided by the releaſe of the diſſeiſee. It is to be noted, that Acts made to the diſſeiſor himſelf ſhall not be avoided by the alteration of his eſtate by the releaſe of the diſſeiſee, as if the Lord before the releaſe had confirmed the eſtate of the diſſeiſor to hold by leſſer ſervices, the diſſeiſor ſhall take advantage of it, and ſo of Eſtovers to be burnt in the houſe, and the like law of a warranty made unto him.

If the heir of the diſſeiſor indow his wife Ex aſſenſu patris, and the diſſeiſee releaſe to the diſſeiſor, he ſhall not avoid the indowment, for that is like the caſe put by Littleton of the Rent-charge.

If an Alien be a diſſeiſor and obtain Letters of Denization, and then the diſſeiſee releaſe unto him, the King ſhall not have the land, for the releaſe hath altered the eſtate, and it is as it were a new purchaſe, otherwiſe it is if the Alien had been the Feoffee of a diſſeiſor.

If the Lord diſſeiſe the Tenant, and is diſſeiſed, the diſſeiſee releaſe to the ſecond diſſeiſor, yet the Seigniory is not revived, for between the parties the releaſe enures by way of Entry and Feoffment as to the land, but not having regard to the Seigniory, and for that the poſſeſſion was never actually removed or reveſted from the diſſeiſor, who claimeth under the lord, the Seigniory is not revived. But if the Lord and a ſtranger diſſeiſe the Tenant, and the diſſeiſee releaſe to the ſtranger, there the Seigniory by operation of law is revived, for the whole is veſted in the ſtranger which never claimed under the Lord. And in that caſe, if the Lord had died, and the land had ſurvived, the Seigniory had been revived. But if the lord had diſſeiſed the Tenant, and been diſſeiſed by two, and the diſſeiſee releaſed to one of them, the Seigniory is not revived, becauſe he claimed (as hath been ſaid) under the Lord.

Sect. 478.

¶ *Quel briefe de eux il eſtiera, &c.* Note many times in one caſe the law doth give a man ſeveral remedies and of ſeveral kinds, as in this caſe by Action and by entry, by Action, either a Writ of right, or Dum fuit infra ætatem.

Vide Sect. 514.

28 E. 3. 98. 9. E. 4. 46. 21. E. 4. 55. 41. E. 3. 10. 2. H. 4. 12.

¶ *Et puis le Diſſeiſor porta briefe de droit, &c.* Here it appeareth that there is a great art and knowledge for a man that hath divers remedies to chuſe his apteſt remedy, as in this caſe, if he bring his Writ of right, the Diſſeiſor ſhall be barred, but if he had entred upon the heir of the Alienee, he ſhould have enjoyed the land for ever. For in that caſe the heir of the Alienee after ſuch an entry ſhall never have a Writ of right no more then if the Diſſeiſee entreth upon the heir of the Diſſeiſor, and make a Feoffment in fee, if the heir of the diſſeiſee

¶ Item, ſi hom ſoit diſſeiſe per un enfant, le quel aliena en fee, & alienee debie ſeiſie, & ſon heire enter, eſteant le Diſſeiſor deins age, ore eſt en election le Diſſeiſour d aver un briefe de Dum fuit infra ætatem, ou briefe de droit enders le heire del alienee, & quel briefe de eux que il eſtiera, il doit recover per la ley, &c. Et auſi il poit enter en ſa terre ſans alcun recovery, & en ceſt caſe lentre l' Diſſeiſee eſt toll', &c. Mes en ceſt cas ſi le diſſeiſee releſſa ſon droit al

Also if a man be diſſeiſed by an infant, who alien in fee, and the Alienee dieth ſeiſed, and his heir entreth, the diſſeiſor being within age, now is it in the election of the diſſeiſor to have a writ of *Dum fuit infra ætatem*, or a writ of right againſt the heir of the alienee, and which writ of them he ſhall chuſe, he ought to recover by the law, &c. And alſo he may enter into the land without any recovery, and in this caſe the entry of the diſſeiſee is taken away,

heire

heire del alienée, & puis l' diſſeiſor porta bre d dret envers lheir dalienée, & il joyne le miſe ſur le mere dꝛoit &c. le graunde aſſiſe doit trober per la ley que le tenant ad pluis mere dꝛoit que ad le Diſſeiſor, &c. pur ceo que le Tenant ad le dꝛoit le diſſeiſee per ſon releaſe, le quel eſt pluis ancient & pluis mere dꝛoit. Car p tiel leas tout le dꝛoit le Diſſeiſee paſſa a le tenant, & eſt en le Tenant. Et a ceo que aſcuns ont dit, que en tiel caſe lou home que ad dꝛoit al terres ou tenements (mes ſon entrie neſt pas congeable) fil releſſa al tenant tout ſon dꝛoit &c. que tiel releaſe uſera per voy dextinguiſhment: Quant a ceo il ſuit eſtre dit, q ceo eſt voyer quant a celuy que releſſa, car p ſon releaſe il ad luy demiſe quietmẽt de ſon dꝛoit, quant a ſon perſon, mes untre le dꝛoit que il adoit bien poit paſſer a le tenant per ſon releaſe: Car entonbenient ſerroit que tiel ancient dꝛoit ſerroit extinct tout ouſtertient, &c. Car il eſt commenement dit que

&c. But in this caſe if the diſſeiſee releaſe his right to the Heir of the Alienee, and after the diſſeiſor bringeth a Writ of right againſt the Heir of the Alienee, and he joyn the miſe upon the meer right, &c. the great aſſiſe ought to find by the law that the tenant hath more meer right than the diſſeiſor, &c. for that the Tenant hath the right of the diſſeiſee by his releaſe, the which is the moſt ancient & moſt meer right: for by ſuch releaſe all the right of the diſſeiſee paſſeth to the tenant, & is in the tenant. And to this ſome have ſaid that in this caſe where a man which hath right to lands or tenements (but his entry is not congeable) if he releaſe to the tenant all his right, &c. that ſuch releaſe ſhall enure by way of extinguiſhment. As to this it may be ſaid that this is true, as to him which releaſeth, for by his releaſe he hath diſmiſſed himſelf quite of his right as to his perſon, but yet the right which he hath may well paſs to the tenant by his releaſe. For it ſhould be inconvenient that ſuch an ancient right ſhould be extinct altogether,

re-enter he ſhall detain the land for ever, and the Feoffee ſhall not maintain any Writ of right, for a bare right ſhall never be left in the Feoffee, but ſhall ever follow the poſſeſſion, as hath been ſaid, but if the Diſſeiſee entreth upon the Heir of the Diſſeiſor, and make a Feoffment in Fee upon condition, and entreth for the condition broken before the Heir of the Diſſeiſor enter, he is reſtored to his right again. 38.E.3.16. 24.H.8. Reſtore al primer action. 5. Vide Sect. 447.

A man maketh a gift in tail, the remainder in fee, Tenant in tail dieth without iſſue, an eſtranger intrude, and he in the remainder brings a Formedon, and recovereth by default, and maketh a Feoffment in fee, the Intruder reverſe the recovery in a Writ of diſceit and entreth, he ſhall detain the Land for ever, and the Feoffee ſhall not have a Writ of right. 9.H.7.24.

And ſo likewiſe if a diſſeiſor die ſeiſed, and a ſtranger abate, and the diſſeiſee releaſe to him, the Heir of the diſſeiſor ſhall enter and detain the Land for ever. For the right to the poſſeſſion ſhall draw the right of the land to it, and ſhall not leave a right in him to whom the releaſe is made, as hath been ſaid before in the 447. Section. 9.H.7.24.

¶ *Le droit del Diſſeiſee paſſa al tenant, & eſt en le tenant.* For ſeeing the Tenant hath the whole Fee ſimple, he is capable of the whole right of the Diſſeiſee, and as Littleton here ſaith, the right is in the Tenant.

¶ *Inconvenient ſerroit.* Here again, as hath been often obſerved, an argument Ab inconvenienti is forcible in Law, and that Judges by the Authority of our Author are to judge of inconvenients as of things unlawful, as hereby and Vide Sect. 87. 138. 139. 231. 269. 440. 722.

by

by many other places it appeareth.

¶ *Un droit ne poit pas morier.* Dormit aliquando jus, moritur nunquam.

Droit ne poit pas morier. &c. for it is commonly ſaid, that a right cannot die.

For of ſuch an high eſtimation is right in the eye of the Law, as the Law preſerveth it from death and deſtruction: trodden down it may be, but never trodden out. For where it hath been ſaid, that a Releaſe of right doth in ſome caſes enure by way of extinguiſhment, it is ſo to be underſtood, either (as Littleton doth here) in reſpect of him that makes the releaſe, or in reſpect that by conſtruction of law it enureth not alone to him to whom it is made, but to others alſo who be eſtrangers to the Releaſe, which as hath been ſaid, is a quality of an inheritance extinguiſhed.

14 H.8.6.b. As if there be Lord and Tenant, and the Tenant maketh a leaſe for life the remainder in fee, if the Lord releaſe to the Tenant for life, the rent is wholly extinguiſhed, and he in the remainder ſhall take benefit thereof, even ſo when the Heir of a diſſeiſor is diſſeiſed, and the Diſſeiſor make a leaſe for life, the remainder in fee, if the firſt diſſeiſee releaſe to the Tenant for life, this is ſaid to enure by way of extinguiſhment, for that it ſhall enure to him in the remainder, who is a ſtranger to the releaſe, and yet in truth the right is not extinct, but doth follow the poſſeſſion, viz. the Tenant for life hath it during his time, and he in the remainder to him and to his heirs, and the right of the inheritance is in him in the remainder; for a right to land cannot die or be extinct in Deed, and therefore if after the death of Tenant for life, the Heir of the Diſſeiſor bring a Writ of right againſt him in the remainder, and he joyn the mile upon the meer right, it ſhall be found for him, becauſe in judgment of law he hath by the ſaid releaſe the right of the firſt diſſeiſee.

Sect. 479, & 480.

14.H.8.fol.5.6. 11.H.7.25. 30.H.6. tit.barre.39. 38.E.3.1c.

¶ HEre Littleton putteth a diverſity between Releaſes which enure by way of extinguiſhment againſt all perſons, and whereof all perſons may take advantage, and Releaſes which in reſpect of ſome perſons enure by way of extinguiſhment, and of other perſons by way of Mitter le droit. Or between releaſes which in Deed enure by extinguiſhment, for that he to whom the Releaſe is made cannot have the thing releaſed, and releaſes which, having ſome quality of ſuch releaſes are ſaid to enure by way of extinguiſhment, but in troth do not, for that he to whom the releaſe is made may receive and take the thing releaſed. And here Littleton putteth caſes where releaſes do abſolutely enure by extinguiſhment without exception, having reſpect to all perſons, and firſt of the Lord and Tenant, Secondly, of the rent-charge. Thirdly, of the common of paſture.

First of the Lord and Tenant, and the Lord releaſe to the Tenant his Seigniory,

¶ Mes releaſes q̄ enurera p voy dextinguiſhment envers touts perſons, ſont lou celuy a que le releas eſt fait, ne poit aver ceo que a luy eſt releas. Sicome ſi ſoyent Sñr & tenant, et le Sñr releſſa al tenant tout le droit que il ad en la Seigniory, ou tout le droit que il ad en le terre, &c. tiel releas va per voy de extinguiſhment envers touts perſons, pur ceo que le Tenant ne poit aver ſerbice pur prender de luy meſme.

But releaſes which enure by way of extinguiſhment againſt all perſons, are where he to whom the releaſe is made cannot have that which to him is releaſed. As if there be Lord and tenant, and the Lord releaſe to the tenant all the right which he hath in the Seigniory, or all the right which he hath in the land, &c. this releaſe goeth by way of extinguiſhment againſt all perſons, becauſe that the Tenant cannot have ſervice to receive of himſelf.

Sect. 480.

¶ En meſme l' maner eſt de re-

In the ſame manner is it of a Releaſe

leas

leas fait al Tenant del terre de un rent charge ou common de paſture, &c. pur ceo que le tenant ne poit aver ceo que a luy eſt releſſe, &c. iſſint tiels releaſes urera per extinguiſhment en touts voyes.

made to the tenant of the land of a Rent-charge or Common of paſture, &c. becauſe the tenant cannot have that which to him is releaſed, &c. ſo ſuch releaſes ſhall enure by way of extinguiſhment in all ways.

this muſt of neceſſity enure by way of extinguiſhment to all men, for the Tenant cannot have ſervice to be taken of himſelf, nor one man can be both Lord and Tenant. The ſecond is of a Rent-charge, a man cannot have land and a Rent iſſuing out of the ſame land. Thirdly, A man cannot have land and a Common of paſture iſſuing out of the ſame land. Et ſic de cæteris. For in all theſe caſes and the like he to whom the Releaſe is made cannot have and enjoy the thing that is releaſed. But in the caſe of the right of the land, the Tenant of the land may take and enjoy it for ſtrengthning his eſtate therein.

The meſne being a Feme entermarry with the Tenant peradvail, if the Lord releaſe to the Feme, the Seigniory only is extinct, but if he releaſe to the husband, both Seigniory and meſnalty are extinct. And in this caſe, if the Lord releaſe to the husband and wife, it is a queſtion how the releaſe ſhall enure, but it is no queſtion but that a releaſe may be made to a Meſnalty or a Seigniory ſuſpended in part of the eſtate.

But here obſerve a diverſity where a releaſe enureth by way of extinguiſhment of an inheritance, which is in poſſeſſion and may be granted over, and a releaſe of a right or an Action lands which cannot be granted over, (r) For the Lord may releaſe his Seigniory to the Tenant of the land for life or in tail, Et ſic de cæteris. But ſo cannot one releaſe a right or an Action, for if it be releaſed but for an hour, it is extinct for ever, as hath been ſaid.

(r) 13 E. 3. tit. Extinguiſhment, Brook 45. & tit. Voucher. F. 120. 30. E. 3. 13. 19. H. 6 19. 21. E. 33. 38. Aſſ. 17. 11. H. 4 tit. Releaſe. 21. 18. E. 2. ibid. 5. 26. H. 8. 5. 41. Aſſ. 6.

And two things are to be obſerved here, firſt that by the releaſe of all the right in the land the Seigniory is extinct, as well as by the releaſe of all the right in the Seigniory, for the Seigniory iſſueth out of the land. Secondly, That by the releaſe of all his right in the ſeigniory of the land, the whole Seigniory is extinct without any words of inheritance. If the Tenancy be given to a Lord and to a ſtranger, and to the heirs of the ſtranger, the Lord releaſe to his Companion all the right in the land, this Releaſe doth not only paſs his eſtate in the Tenancy, but extinguiſheth alſo his right in the Seigniory, and ſo one Releaſe enures to extinguiſh ſeveral rights in one and the ſame land.

If there be Lord and Tenant by Fealty and Rent, the Lord granteth the Seigniory for years, and the Tenant attorneth, the Lord releaſeth his Seigniory to the Tenant for years, and to the Tenant of the land generally, the whole Seigniory is extinct, and the ſtate of the leſſee alſo. But if the releaſe had been to them and their heirs, then the leſſee had had the Inheritance of the one moity, and the other moity had been extinct. And the reaſon of this diverſity is, becauſe when the releaſe is made generally, it can enure to the leſſee but for life, becauſe it enureth by way of enlargement of eſtate, and being made to the Tenant of the land, it enureth by way of extinguiſhment, as Littleton here ſaith, and then there cannot remain a particular eſtate in the Seigniory for life. But when the releaſe is made to them and their heirs, each one takes a moity, the one by way of encreaſing of the eſtate, and the other by extinguiſhment.

Sect. 481.

¶ Item de prober que le graund Aſſiſe doit paſſer pur le demandant en le caſe avaunt dit, jeo aye oye ſovent la Lecture de Leſtatute

ALſo to prove that the grand Aſſiſe ought to paſs for the demandant, in the caſe aforeſaid I have often heard the reading of the ſtatute of Weſt. 2.

¶ *Ieo aye oye ſovent la Lecture de Weſt.* 2. Here it is to be obſerved, of what authority, antient Lectures or Readings upon Statutes were, for that they had five excellent qualities: Firſt, They declared what the Common Law

Law was before the making of the Statute, as here it appeareth. Secondly, they opened the true ſenſe & meaning of the Statute. Thirdly, Their caſes were brief, having at the moſt one point at the Common law, and another upon the Statute. Fourthly, Plain and Perſpicuous, for then the honour of the Reader was to excel others in Authorities, Arguments, and reaſons for proof of his opinion & for confutation of the objections againſt it. Fifthly, They read, to ſuppreſs ſubtle inventions to creep out of the Statute. But now Readings having loſt the ſaid former qualities, have loſt alſo their former authorities: for now the caſes are long, obſcure, and intricate, full of new conceits, liker rather to Riddles than Lectures, which when they are opened they vaniſh away like ſmoke, and the Readers are like to Lapwings, who ſeem to be neareſt their neſts when they are fartheſt from them, and all their ſtudy is to find nice evaſions out of the Statute. By the Authority of Littleton Antient Readings may be cited for proof of the law, but new Readings have not that honour, for that they are ſo obſcure and dark.

de Weſtminſter ſecond, que commence, In caſu quo vir amiſerit per defaltam tenementum quod fuit jus uxoris ſuæ, &c. que a le Common Ley devant meſm Leſtatut, ſi Leale ſoit fait a un home pur terme de vie, le remainder ouſter en fee, & un eſtrange per feint Action uſt recober enders le tenant a fme de vie per default, & puis le Tenant muruſt, celuy en le remainder navoit aſcũ remedie devant le Statute, pur ceo que il navoit aſcun poſſeſſion del terre.

which begun thus: *In caſu quo vir amiſerit per defaltam Tenementum quod fuit jus uxoris ſuæ, &c.* That at the Common Law before the ſaid Statute, if a leaſe were made to a man for term of life, the remainder over in fee, and a Stranger by feigned Action recovered againſt the Tenant for life by default, and after the tenant dieth, he in the remainder had no remedy before the Statute, becauſe he had not any poſſeſſion of the Land.

(a) 24.E.3.35.28.E.3.96 18.E.2. Entry 74. 3.E.2 Entry 7 6.E.3.24 7.E.3. Ent 62. 7.E.3. 54. 55. 15.E.4.15. F.N.B. 217.d. Regiſter 241.

¶ *Leſtatute de W.* 2. which is the third Chapter.

¶ *Le remainder ouſter en fee.* Here is to be obſerved, that although the Statute ſpeaketh of a Reverſion, (a) yet by the Authority of Littleton a remainder is within the Statute.

See the Statute of 14. Eliz. cap. 8. which provideth fully for him in the remainder.

¶ *Feint action.* Feint is a Participle of the French word Fiendre, which is to feign or falſly pretend, ſo as a feint Action is a falſe Action.

(b) W. 2. cap. 5. Vid. 34.E.3. Formdon 31 11.E.3 ib 31. 8 E. 3.59. F.N.B.217.d. 7.H.7.13.

¶ *Navoit aſcun remedie devant Leſtatute.* (b) Here it appeareth by Littleton, That if a man maketh a leaſe for life the remainder in fee, and tenant for life ſuffereth a Recovery by default, that he in the remainder ſhould not have a Formedon by the common law: for Littleton ſaith, that he had not any remedy before the Statute. Neither is there any ſuch Writ in that caſe in the Regiſter, albeit in ſome books mention is made of ſuch a Writ.

Sect. 482.

38 E.3.3.Tit. Juriſdiction 1.

¶ HEre a Diſſeiſin gotten by wrong, and defeated by the entry of him that right hath, is ſufficient to maintain a Writ of right againſt the recoveror in this caſe, for albeit

¶ MES ſi celuy en le remainder uſt enter ſur le tenant a fme de vie, & luy diſſeiſt, & apres

BUt if he in the remainder had entred upon the Tenant for life, and diſſeiſed him, and after the te-

le Tenaunt entra ſur luy, et apꝛs le tenant a terme de vie, per tiel recovery perde per default & mozust, oze celuy en l'remainder vien poit aver vriefe de Dꝛoit enūs celuy que recovera, pur ceo que le miſe ſerra joiñ ſolement ſur le mere dꝛoit, &c. Uncoze en teſt caſe, le ſeiſin de celuy en le remainder ſuit deſeat per entrie del tenant a terme de vie. Mes peradventure aſcuns voilent argue et dire, que il nadera vriefe ō Dꝛoit en teſt caſe pur ceo q̄ quant le miſe ẽ joine, il eſt joiñ en tiel mañ, ꝟ, q̄ le tenant ad plus mere dꝛoit en le terre en le manner come il tyent, q̄ le demandãt ad en le maner come il demanda, et pur ceo que le ſeiſin del dōt ſuit deſeat per lentry de le tenant a terme de vie, &c. donque il ad nul dꝛoit en le manner come il demaund.

nant enter upon him, and after the Tenant for life by ſuch recovery loſe by default and die, now he in the remainder may well have a Writ of Right againſt him who recovers, becauſe the Miſe ſhal be joined only upon the meer right &c. Yet in this caſe the Seiſin of him in the remainder was defeated by the entry of the tenant for life. But peradventure ſome will argue and ſay, That he ſhall not have a Writ of Right in this caſe, for that when the Miſe is joined, it is joined in this manner, (*ſcilicet*) if the Tenant hath more meer right in the land in the manner as he holdeth, than the demandant hath in the manner as he demandeth, and for that the ſeiſin of the demandant was defeated by the entry of the tenant for term of life, &c. then he hath no right in the manner as he demandeth.

the ſeiſin is defeated between the Leſſee for life, and him in the remainder, yet having regard to the Recoveror, who is a meer ſtranger and hath no title, it is ſufficient againſt him. But otherwiſe it is againſt the party himſelf that defeated the Seiſin, and the Law is prepenſe to give remedy to him that right hath. And where ſome have thought, that there is no authority in Law to warrant Littletons opinion herein, they are greatly miſtaken, for Littleton hath good warrant for all that he hath written. 7.E.3.62. 38.E.3.39. Tit. Jur. ult. I.

Lands are letten to A. for life, the remainder to B. for life, the remainder to the right heirs of A. A dieth, B entreth and dieth, a ſtranger intrudeth, the heir of A. ſhall have a Writ of right of the Seiſin which A. had as Tenant for life.

Lands are letten to A. and B. and to the heirs of A. A. dyeth, a recovery is had againſt B. the heir of A. ſhall have a Writ of right of the whole, for every Joyntenant is ſeiſed per my & per tout.

If lands be given in tail, the remainder to A. in Fee, the Donee dieth without Iſſue, his wife priveñt enſeint, A. entreth, the Iſſue is born and entreth upon him and dieth without Iſſue, A. ſhall have a Writ of Right, of the Seiſin which he had.

If lands be given in tail to A. the remainder to his right heirs, A. dieth without Iſſue, the collateral heir of A. ſhall have a Writ of Right of the ſeiſin of A. 4.E.3.16.17.

And ſo note a diverſity between a Seiſin to cauſe poſſeſſio fratris, &c. for there is required a more actual ſeiſin, and a ſeiſin to maintain a Writ of Right. And hereby alſo are the (&c.) in this Section explained. 40.E.3.8. 42.E.3.10. 37.Aſſ.4.24.E.4.24.7. H.5.4.11.E.4.11.

Sect. 483.

A Ceo poit eſtre dit, q̄ ceux parols (modo & forma prout &c.) in mults des cases ſont

TO this it may be ſaid, that theſe words (*modo & forma prout, &c.*) in many caſes are words

parols de forme de pleder, & nemy parols de ſubſtance. Car ſi home port briefe dentre In caſu proviſo, del alienation fait per le tenant en dower a ſon diſinheritance, et counta del alienation fait en fee, et le tenant dit, que il ne aliena pas en le manner come le demaundant ad declare, et ſur ceo ſount a iſſue, & trove eſt per verdict, que le tenant alyenaſt en le taile, ou pur terme dauter vie, le demaundant recovera: uncore lalyenation ne fuit en le manner come le demaundant avoit declare, &c.

of form of pleading, and not words of ſubſtance: for if a man bring a Writ of Entry *in caſu proviſo*, of the alienation made by the tenant in Dower to his diſinheritance, and counteth of the alienation made in fee, and the tenant ſaith, that he did not alien in manner as the Demandant hath declared, and upon this they are at iſſue, and is found by verdict, that the Tenant aliened in tail, or for term of another mans life, the Demandant ſhall recover: yet the alienation was not in manner as the Demandant hath declared, &c.

¶ Where Modo & Forma are of the ſubſtance of the iſſue, and where but words of form, this diverſity is to be obſerved, (c) where the iſſue taken goeth to the point of the Writ or Action, there Modo & Forma, are but words of form, as here in the Caſe of the Writ of Entry in caſu proviſo, and ſo is the (&c.) well explained in this Section. But otherwiſe it is, when a collateral point in pleading is traverſed, as if a feoffment be alledged by two, and this is traverſed Modo & Forma, and it is found the feoffment of one, there Modo & Forma is material. So if a feoffment be pleaded by Deed, and it is traverſed Abſque hoc quod feoffavit Modo & Forma, upon this Collateral Iſſue, Modo & Forma are ſo eſſential, as the Jury cannot find a feoffment without Deed.

(c) 9. H. 6. 1. 40. E. 3. 35. 21 E 4. 22. F. N. B. 206. g. 42 E. 3. 5. 32 H. 8, iſſue, Br. 80. Vid. Sect. ſequent.

12. E. 4. 4.

Sect. 484.

¶ *Trove eſt per verdict que il tient per fealtie, tantum.* Here is another diverſity to be obſerved. That albeit the iſſue be upon a collateral point, yet if by the finding of part of the iſſue, it ſhall appear to the Court that no ſuch action lieth for the plaintif no more than if the whole had been found, there Modo & Forma are but words of form, as here in the caſe which Littleton putteth of the Lord and Tenant, appeareth.

Vid. Sect. preced.

10. E. 4. 7. 8. E. 4. 15. 20. E. 4. 3. 21. E. 4. 3. Merlebr. cap. 3.

¶ *Car le matter del iſſue eſt le quel il tient de luy ou nemy, &c.*

Here it appeareth, that

¶ Aury ſi ſoient Sñr, &c. & le ſ tient ol Sñr per fealtie ſolement, et le Sñr diſtreine le tenant pur rent, & le tenant porta briefe de Treſpas envers ſon Seignior de les avers iſſint prīſes, & le Seignior plede que le tenant tient de luy per fealtie & certain rent, & pur l' rent arere il vient a diſtreiner, &c. & demaunde judgemēt de briefe port vers luy, Quare vi & armis, &c. & lauter dit que il ne tient de luy en le maner come il ſuppoſe, et ſur

Alſo if there be Lord and Tenant, and the Tenant hold of the Lord by fealty only, and the Lord diſtrein the Tenant for rent, and the Tenant bringeth a Writ of Treſpaſs againſt his Lord for his cattel ſo taken, and the lord plead that the tenant holds of him by fealty and certain Rent, and for the Rent behind he came to diſtrein, &c. and demand judgment of the Writ brought againſt him, *Quare vi & armis, &c.* And the other ſaith, that he doth not

ceo

ceo ſont a iſſue, & trove eſt per verdict que il tient de luy per fealty tantum, en ceſt caſe le briefe abatera, et uncore il ne tient d̄ luy en le maner come le ſeignior avoit dit. Car le matter del iſſue eſt, le quel le tenant tient de luy ou nemy, car ſil tient de luy, coment que le Seignior diſtreina le tenant pur auter ſervices que ne doit aver, uncore tiel briefe de Treſpaſſe, Quare vi & armis, &c. ne giſt enveis le Seignior, mes ſerra abate.

hold of him in the manner, as he ſuppoſe, and upon this they are at iſſue, and it is found by verdict that he holdeth of him by fealty only. In this caſe the Writ ſhall abate, and yet he doth not hold of him in the manner as the Lord hath ſaid, for the matter of the iſſue is whether the Tenant holdeth of him or no, for if he holdeth of him, although that the Lord diſtrein the Tenant for other ſervices which he ought not to have, yet ſuch Writ of Treſpaſs, *Quare vi & armis, &c.* doth not lie againſt the Lord, but ſhall abate.

if the matter of the iſſue be found it is ſufficient. And this rule holds in criminal cauſes. For if A. be appealed, or indicted of Murder, viz. that he of malice prepenſed killed I. A. pleadeth that he is not guilty modo & forma, yet the Jury may find the defendant guilty of Man-ſlaughter without malice prepenſed, becauſe the killing of I. is the matter, and malice prepenſed is but a circumſtance. Pl. Com. 101.

In Aſſiſe of Darreine preſentment, if the Plaintiff alleadge the avoydance of the Church by priviation, and the Jury find the avoidance by death, the Plaintiff ſhall have judgment, for the manner of voidance is not the title of the Plaintiff, but the voydance is the matter. 6.E.3.41.b. 25.E.3.50. 9.H.7.3. 13.H.7.14. 29.E.3.38.

(d) If a Gardeine of an Hoſpital bring an Aſſize againſt the Ordinary, he pleadeth that in his viſitation he deprived him as Ordinary, whereupon iſſue is taken, and it is found that he deprived him as Patron, the Ordinary ſhall have judgment, for the deprivation is the ſubſtance of the matter. (d) 8.E.3.70. 8.Aſſ.29. & 39. 9.E.3.338. 24.E.3 34. 5.H.4.2. 7.H.4.11. Pl.Com.92. 3.Mar.Dier.116. 40.E.3 35. Dier.2.&. 3.Ph.& Mar. 115.b. Trin.29.Eliz. Rot.920. Wolmans caſe. 48 E.3.28. 34.Aſſ.3. 30.Aſſ.5. 41.E.3.28. 33.E.3. Verdict.47. 22.E.3.1.b. 18.E.3 48. 31.E.3. account.58. 28.Aſſ. 48.

The Leſſee covenant with the Leſſor not to cut down any trees, &c. & bind himſelf in a bond of forty pounds for performance of Covenants, the Leſſee cut down ten trees, the Leſſor bringeth an Action of Debt upon the bond, & aſſigneth a breach that the Leſſee cutteth down twenty trees, whereupon iſſue is joyned, and the Jury find that the Leſſee cut down ten, judgment ſhall be given for the Plaintiff. For ſufficient matter of the iſſue is found for the Plaintiff.

Sect. 485.

¶ Auxy en briefe de treſpaſſe de batterie ou des biens emports, ſi le defendant plede de rien culpable, en le maſſ come le Plaintiff ſuppoſe, & trove eſt que le defendant eſt culpable en auter ville, ou a auter jour que le Plaintiff ſuppoſe, uncore il recovera.

ALſo in a Writ of Treſpaſs for battery, or for goods carried away, if the Defendant plead not guilty, in manner as the Plaintiff ſuppoſe, and it is found that the Defendant is guilty in another Town, or at another day then the Plaintiff ſuppoſe, yet he ſhall recover.

¶ *En briefe de treſpaſſe de battery & des biens emports, &c.*

Here Littleton ſpeaketh of Actions brought for things tranſitory. In which caſes the wrong being done in one Town, the Plaintiff may not only alledge it in another Town, as Littleton here ſaith, but alſo in another County, and the Jurors upon not guilty pleaded are bound to find for the Plaintiff.

Neither can the aſſault, battery, or taking of goods, &c. alledged in another county, be traverſed without ſpecial cauſe.

cauſe of juſtification which extendeth to ſome certain place, as if a Conſtable of a Town in another County arreſt the body of a man that breaketh the peace, there he may traverſe the county (but he muſt not reſt there) but all other places ſaving in the Town whereof he is Conſtable. And ſo it is of taking of goods, the Defendant juſtifie for damage feaſant in another County he muſt traverſe as before. But where the cauſe of the juſtification is not reſtrained to a certain place, that is ſo local as it cannot be alledged in any other Town as in the caſes before alledged, and the like, then albeit the Action be brought in a forrain County, yet he muſt alledge his juſtification in the County where the Action is brought. As if a man be beaten in the County of Middleſex, and he bringeth his Action in the County of Buck. the Defendant cannot plead that the Plaintiff aſſaulted him in the County of Midd. &c. and traverſe the County, but he muſt plead his juſtification in the County of Buck. for that the cauſe of his juſtification is good in any place. And ſo it is in caſe of bailment of goods, and other caſes for tranſitory things, as for example.

Et iſſint en pluſors auters caſes, ceux parols, ſ. en le maner come le demaundant ou l' plaintife ad ſuppoſe, ne font aſcun matter de ſubſtance del iſſue. Car ē briefe de droit, lou le miſe eſt joyne ſur le mere droit, il eſt a tant a dire, et a tiel effect, ſ. le quel ad pluis mere droit, le tenant ou le demandant al choſe en demand.

And ſo in many other caſes theſe words, ſ. in manner as the demandant or the Plaintiff hath ſuppoſed, do not make any matter of ſubſtance of the iſſue: for in a Writ of right, where the miſe is joyned upon the meer right, that is as much to ſay, & to ſuch effect, *viz.* whether the tenant or demandant hath more meer right to the thing in demand.

In an Action upon the caſe the Plaintiff declared for ſpeaking of ſlanderous words which is tranſitory, and laid the words to be ſpoken in London, the Defendant pleaded a concord for ſpeaking of words in all the Counties of England, ſaving in London, and traverſed the ſpeaking of the words in London: the Plaintiff in his replication denied the concord, whereupon the Defendant demurred, and judgment was given for the Plaintiff. For the Court ſaid, that if the concord in that caſe ſhould not be traverſed, it would follow that by a new and ſubtle invention of pleading, an Ancient principle in law, (that for tranſitory cauſes of Action the Plaintiff might alledge the ſame in what place or County he would) ſhould be ſubverted, which ought not to be ſuffered, and therefore the Judges of both Courts allowed a traverſe upon a traverſe in that caſe: And the wiſdom of the Judges and Sages of the Law have always ſuppreſſed new and ſubtle inventions in derogation of the Common Law. And therefore the Judges ſay in one book (e) we will not change the law which always hath been uſed. And another ſaith (f) it is better that it be turned to a default, than the Law ſhould be changed, or any innovation made.

Trin. 30. Eliz. in the Kings bench between Inglebert & Jones. And herewith agreeth a Judgment in the Court of Com. Pleas, Paſch. 38. Eliz. Rot. 1656.

(e) 58 E. 3. 1.
(f) 2. H. 4. 18.

A man did grant a rent, with a new invented clauſe of Diſtreſs, viz. That the Grantee ſhould hold the Diſtreſs againſt gages and pledges, and yet by the whole Court he ſhall gage deliverance, for otherwiſe by this new invention all Replevies ſhall be taken away.

31. E. 3. Gager. deliver. 5. (*) 42. Aſſ. 12. 4 E. 3. c. 5 18. E. 3 ca. 1. & ca. 6. 4 H. 4. cap. 2.

(*) See many other new inventions in derogation of the Common Law diſallowed by the Judges and by the Court of Parliament.

(h) Lib. 6. f. 46. 47. Dowdales caſe. 3 E. 3. Aſſ. 446. 27. E. 3. 86. 1. aſſ 16. 3. aſſ. 4. 6 aſſ. 4. 5. Aſſ 7. 18. E. 3. 28. 21. Aſſ. 8. 29. Aſſ. 5. 42. E. 3. 6. b. 14. H. 4 35. 5. H. 5. 2. 10. H. 6. 13. 21 H 6. 51 37. H. 6. 2. 7. E. 4. 45. 18. E. 4. 1. 22. E. 4 19. 13. H. 7. 17. 2. Mar. Br. attaint. 104. 10. Eliz Dier. 271.

(h) Where the Jury is bound to find aſwel local things in many caſes as tranſitory in other Counties, ſee at large in my Reports.

By this which hath been ſaid you ſhall know the Law as it is now in uſe in theſe caſes, and the better underſtand our (i) books when you ſhall read them concerning as well local as tranſitory things, wherein you ſhall find great variety of opinion in our books.

(i) 19. H. 6 48. 11. H. 6. 6 43. E. 3. 32. b. 46. E. 3. 3. a 9. H. 6. 62. 21. H. 6. 27. 14. H. 8. 24. 18. E. 4. 1. 20. H. 6. 2. 34. H. 6. 42. 14. H. 6. 21. 22. 4. H. 6. 13. 33. H. 6. 25. 12. E. 4. 12. 28 H 8. Dier. 29. 21. E. 4. 19. 80. 27. H. 8. 19. 12. H. 8. 1. 11. H. 4. 65. 19. H. 8. 6.

¶ *Si le defendant plead de rien culpable.* This is a good iſſue if the Defendant committed no battery at all, but regularly by the Common Law if the Defendant hath cauſe of juſtification or excuſe, then can he not plead not guilty, for then upon the evidence it ſhall be found againſt him, for that he confeſſeth the battery, and upon that iſſue cannot juſtifie it, but he muſt plead the ſpecial matter, and confeſs and juſtifie the battery.

The like Law is in other caſes, and therefore this is a learning neceſſary to be known, for that the loſs of moſt cauſes dependeth thereupon. As if in battery the defendant may juſtifie the ſame to be done of the Plaintiffs own aſſault he muſt plead it ſpecially, and muſt not plead the general iſſue, and ſo of the like. In treſpaſs of breaking his cloſe, upon not guilty he

he cannot give in evidence, that the beaſts came thorow the Plaintiffs hedge, whilſt he ought to keep, nor upon the general iſſue juſtifie by reaſon of a Rent-charge, common, or the like. 25.H.8. Br.

In detinue the Defendant pleadeth Non detinet, he cannot give in evidence, that the goods were pawned to him for money, and that it is not paid, but muſt plead it, but he may give in evidence a gift from the Plaintiff, for that proveth, he detaineth not the Plaintiffs goods. 22.H.8 33.

(d) So in an Action of waſte, upon the plea Nul waſt fait, he may give in evidence any thing, that proveth it no waſte, as by tempeſt, by lightning, by enemies, and the like, but he cannot give in evidence juſtifiable waſte, as to repair the houſe, or the like. (e) If one doth waſte, and before the Action brought the Leſſee repaireth it, and after the Leſſor bringeth an Action of waſte, and the leſſee plead Quod non fecit vaſtum, he cannot give in evidence the eſpecial matter. (d) 12 H 8.1. 19 E 3. waſt 32. 10.E.3. waſt 32. (e) 10. Eliz. Dier. 272. Mar. Dier. 2.12.

If two men be bound in a bond jointly, and the one is ſued alone, he may plead this matter in abatement of the Writ, but he cannot plead Non eſt factum, for it is his Deed, though it be not his ſole Deed. (f) See in Whelpdales caſe, where a man may ſafely plead Non eſt factum, and where not, and the former books that treat of that matter well reconciled. f Lib 5 fo.119. Whelpdales caſe. 7 E 3.5 7.E. 6 Br. Non eſt fact. 12. 1.H.7.15.

(g) Upon Plene adminiſtravit pleaded by an Executor, Et iſſint riens inter maines, if it be proved that he hath goods in his hands which were the Teſtators, he may give in evidence that he hath paid to that value of his own money, and need not plead it ſpecially. 24.H.8. 8 Pl. Com. Dive & Man caſe. 36.H.8.Dier.59 2 Mar. Dier.112.1.El Dier.257

In an Aſſiſe if the Tenant plead Nul tort nul diſſeiſin, he cannot give in evidence a Releaſe after the Diſſeiſin, but a releaſe before the Diſſeiſin he may, for then there is no Diſſeiſin upon the matter. ( ) Hill 10.H.8.Rot. 223 in Comm. banco. 21 Mich.6.E.6.in Com. banco Sendlines.

In a Writ of Right if the Tenant joyn the Miſe upon the meer right, he cannot give in evidence a collateral warranty, for he hath not any right by it, and therefore it ought to have been pleaded. 7.H.5 9. 6 H.7 10. 34 H 6 5 Droit. 29. 9 E.3 32. 8.E. 3. 4. 33.E 3 Ve d 18.H 6 24 39 H.6.38. 18.E.3.19.

Of this learning you ſhall read plentifully in our books, and in my Reports. This little taſte ſhall here ſuffice to make the Reader capable of the reſt. Regularly whenſoever a man doth any thing by force of a warrant or Authority, he muſt plead it. Pl.Com.81.173.2 H.7. 76 16.Keilw.21.E.4.11.

But all that hath been ſaid muſt be under two cautions. Firſt, that whenſoever a man cannot have advantage of the ſpecial matter by way of pleading, there he ſhall take advantage of it in the evidence. For example, the rule of Law is, that a man cannot juſtifie in the killing of death of a man, and therefore in that caſe, he ſhall be received to give the eſpecial matter in evidence, as that it was Se defendendo, or in defence of his houſe in the night againſt thieves and robbers, or the like. 22.E.4.45. 13.H.7.13. Stanf.Pl. Cor.15. 22.Aſſ.55. 57.H. 6.21. 7.Ja.22.5.

Secondly, That in any Action upon the caſe, Treſpaſs, Battery, or of falſe impriſonment againſt any Juſtice of peace, Major, or Bailiff of City or Town corporate, Head-borough, Port-reve, Conſtable, Tithingman, Collector of Subſidy or Fifteen, in any his Majeſties Courts in Weſtminſter, or elſewhere concerning any thing by any of them done by reaſon of any of their offices aforeſaid, and all other in their aid or aſſiſtance, or by their commandment, &c. they may plead the general iſſue, and give the ſpecial matter for their excuſe or juſtification in evidence.

In an Action of treſpaſs or other ſuit againſt any perſon for taking of any diſtreſs or other Act doing by force of the Commiſſion of Sewers, the Defendant in any ſuch Action ſhall and may make Avowry, Conuſance, or juſtification generally, that it was done by Authority of the Commiſſion of Sewers for Lot or Tax aſſeſſed by that commiſſion, &c. and the Plaintiff ſhall reply he did it of his own wrong without ſuch cauſe. And both theſe Acts were made for avoiding of prolixity and captiouſneſs of pleading, tending to the great charge and danger of Officers and Miniſters of Juſtice, &c. Evidence, *Evidentia*. This word in legal underſtanding doth not only contain matters of Record, as Letters Patents, Fines, Recoveries, Inrollments, and the like, and Writings under ſeal, as Charters and Deeds, and other writings without ſeal, as Court Rolls, Accounts, and the like, which are called evidences Inſtrumenta, but in a larger ſenſe it containeth alſo Teſtimonia, the Teſtimony of witneſſes, and other proofs to be produced and given to a Jury, for the finding of any iſſue joyned between the parties. And it is called evidence, becauſe thereby the point in iſſue is to be made evident to the Jury. Probationes debent eſſe evidentes, (id eſt) perſpicuæ & faciles intelligi. But let us now return to Littleton. 23 H.8.cap.5.

¶ *Ou a auter jour que le Plaintife ſuppoſe.* (g) As if the Treſpaſs were done the fourth of May, and the Plaintiff alledgeth the ſame to be done the fifth of May, or the firſt of May, when no Treſpaſs was done, yet if upon the evidence it falleth out, that the Treſpaſs was done before the Action brought, it ſufficeth: and this is warranted by Littleton, who ſpeaketh indefinitely, that the Jury may find the Defendant guilty at another day then the Plaintiff ſuppoſeth. (g) 19 H.6. 47. 5.E. 4 5. 21.E 4 66.

¶ *Et a tiel effect.* Here is to be obſerved, That the law of England reſpecteth the effect

effect and ſubſtance of the matter, and not every nicety of form or circumſtance, Qui hæret in litera, hæret in cortice; & apices juris non ſunt jura.

Sect. 486.

¶ Item ſi home ſoit diſſeiſie, & le Diſſeiſor devie ſeiſie, &c. & ſon fits & heire eſt eins per diſcent, & le Diſſeiſee enter ſur lheire Diſſeiſor, le quel entrie eſt un diſſeiſin, &c. ſi lheire port Aſſiſe ou Briefe de Entrie en nature de Aſſiſe, il recovera.

ALſo if a man be diſſeiſed, and the diſſeiſor dieth ſeiſed, &c. and his ſon and heir is in by diſcent, and the Diſſeiſee enter upon the heir of the Diſſeiſor, which entry is a Diſſeiſin, &c. if the heir bring an Aſſiſe or a Writ of Entry in nature of an Aſſiſe, he ſhall recover.

¶ And the reaſon hereof is, for that in the writ of Right mentioned in the next Section the charge of the grand Aſſiſe upon their Oath is upon the meer right, and not upon the poſſeſſion.

Sect. 487.

¶ *Car ſi le heire le Diſſeiſor, &c.* Here is a diverſity to be obſerved concerning that which hath been ſaid, when the poſſeſſion ſhall draw the right of the land to it, and when not. And therefore when the poſſeſſion is firſt, and then a right cometh thereunto, the entry of him that hath right to the poſſeſſion ſhall gain alſo the right, which as before it appeareth in theſe caſes there put, followeth the poſſeſſion, and the right of poſſeſſion draweth the right unto it, but when the right is firſt, and then the poſſeſſion cometh to the right, albeit the poſſeſſion be defeated, (as here in Littletons caſe it is by the Heir of the diſſeiſor) yet the right of the Diſſeiſee remaineth.

56.E.3.72.

Vide Sect. 447.

5 Aſſ. 1. 10. Aſſ. 16.

¶ *Briefe Dentrie en le per.* A. dyeth ſeiſed, and the land diſcendeth to B. his ſon, before he entreth, an eſtranger abateth and dyeth ſeiſed, B. entreth, againſt whom the heir of the Abator recovereth in an Aſſiſe, B. may have a Writ of Mortdanceſtor

¶ Mes ſi lheire port Briefe de droit envers le Diſſeiſee il ſerra barre, pur ceo que quant le graund Aſſiſe eſt jure, lour ſerement eſt ſur le mere droit, & nemy ſur le poſſeſſion. Car ſi lheire le Diſſeiſor ſuiſt un Aſſiſe de Novel diſſeiſin, ou briefe Dentre en nature daſſiſe, & recoverast vers le Diſſeiſee, & ſuiſt execution uncore poit le Diſſeiſee aver briefe Dentre en le Per envers luy, de le Diſſeiſin fait a luy per ſon pere, ou il poit aver envers lheire briefe de droit.

BUt if the Heir bring a Writ of Right againſt the Diſſeiſee, he ſhall be barred, for that when the grand Aſſiſe is ſworn, their Oath is upon the meer right, and not upon the poſſeſſion: For if the Heir of the Diſſeiſor ſue an Aſſiſe of *Novel diſſeiſin*, or a Writ of *Entrie* in nature of an Aſſiſe, and recovers againſt the Diſſeiſee, and ſueth execution, yet may the diſſeiſee have a Writ of *Entrie* in the *Per* againſt him, for the Diſſeiſin made to him by his father, or he may have againſt the heir a writ of Right.

danceſter, and recover the land againſt him. And if the Diſſeiſin had been done to A. &c. then after the recovery in the Aſſiſe, B. ſhould have had a writ of Entry in the Per, becauſe the heir that is in by diſcent is in the Per.

Sect. 488.

¶ MEs ſi le heire doit recover envers le Diſſeiſee en le caſe avantdit, per bꝛe de Dꝛoit, donque tout ſon dꝛoit ſerroit clerement ale, pur ceo que judgement final ſerroit done envers luy, que ſerroit encounter reaſon lou le Diſſeiſee ad l' pluis meere dꝛoit, &c.

BUt if the Heir ought to recover againſt the Diſſeiſee in the caſe aforeſaid by a Writ of a Right, then all his right ſhould be cleerly taken away, for that judgment final ſhall be given againſt him, which ſhould be againſt reaſon where the Diſſeiſee hath the more meer right.

¶ *Judgement final.* The form whereof you ſhall ſee in the laſt Section of this Chapter.

¶ *Que ſerra encounter reaſon.* Argumentum ab inconvenienti. Vid. Sect. 87. &c.

Sect. 489.

¶ ET ſaches mon fits que en bꝛiefe de Dꝛoit apꝛes ceo q̄ les quater chivalers ont eſlie le grand Aſſiſe, donques il nad pluis greinder delay que en un bꝛiefe de Formedon, apꝛes ceo q̄ les parties ſont a iſſue, &c. et ſi le miſe ſoit joyne ſur le Battaile, donques il ad meind̄ delay.

AND know (my ſon) that in a Writ of Right after the four Knights have choſen the grand Aſſiſe, then he hath no greater delay than in a Writ of *Formedon*, after the parties be at iſſue, &c. And if the Miſe be joined upon battel, then he hath leſſer delay.

¶ *Battaile.* See for this word in the laſt Section of this Chapter.

¶ *Iſſue, &c.* Or Demurrer, which is an Iſſue in Law.

Sect. 490, & 491.

¶ Item releaſe d̄ tout l' dꝛoit, &c. en aſcun caſe eſt bone, fait a celuy que eſt ſuppoſe tenāt en Ley, coment que il nad riens en les Tenements. Sicome en Præcipe quod reddat, ſi le Tenāt aliena la terre pendant le bꝛiefe, et puis le demaundant releſſa a luy

ALſo a releaſe of all the right, &c. in ſome caſe is good, made to him which is ſuppoſed Tenant in Law, albeit he hath nothing in the Tenements. As in a *Præcipe quod reddat*, if the Tenant alien the land hanging the Writ, and after the Demandant releaſeth

luy tout ſon droit, &c. tel releaſe eſt bone, pur ceo que il eſt ſuppoſe deſtre tenant per le ſuit del Demandant, et uncore il nad riens en la Terre al temps de releaſe fait.

to him all his right, &c. this Releaſe is good, for that he is ſuppoſed to be Tenant by the ſuit of the Demandant, and yet he hath nothing in the land at the time of the Releaſe made.

Sect. 491.

¶ EN meſme le manner eſt, ſi le Præcipe quod reddat le tenant vouche & le Vouchee ent en le Garrantie, ſi apres le Demandant releſſa al vouchee tout ſon droit, ceo eſt aſſets bone, pur ceo que l' Vouchee apres ceo que il avoit enter en le Garrantie, eſt Tenant en Ley al Demandant, &c.

IN the ſame manner it is in a *Præcipe quod reddat*, the tenant vouch and the Vouchee enters into Warranty, if afterward the Demand. releaſe to the vouchee all his right, this is good enough, for that the Vouchee after that he hath entred into Warranty is Tenant in Law to the Demandant, &c.

¶ HEre it doth appear, that there is a Tenant in Deed and a Tenant in Law, and Littleton in this and the next Section putteth two examples of Tenants in Law, viz. (h) the Tenant to a Præcipe after alienation, and of the Vouchee, whereof ſomewhat hath been ſaid before.

(h) 10. E. 4. 13. 12. Aſſ. 41. 22. Aſſ. 18. 23. E. 3. 21. 25. E. 3. 40. 38. E. 3. 10. 11. 7. E. 3. 6. 19. E. 3. tit. Reſceit. 34 E. 3. tit. Reſceit. 9. E. 4. 16. 39. H. 6. 40. 17. Aſſ. 24. 8. H. 7. 5. 20. Aſſ. 2. 14. E. 3. Procedendo. 4. 9. E. 3. 17, 32. E. 3. Quare Imp. 2 Dyer. 17. Eliz. 341. Sect. 447.

And it is obſervable, that Littleton ſaith, that in both caſes he is Tenant in Law to the Demandant, and yet he hath nothing in the land. And therefore if after the Vouchee hath entred into warranty, and become Tenant in Law, an Anceſtor collateral of the demandant releaſeth to the Vouchee with warranty, he ſhall not plead this againſt the Demandant, for that the releaſe by the eſtranger is void, which beſides the authorities before touched, appeareth by Littleton himſelf, (i) for he ſaith, that he is Tenant in Law to the Demandant, whereby he excludeth, that he is Tenant in reſpect of any eſtranger.

(i) Vi. devant. Sect. 447.

Sect. 492.

¶ NOta, there be two kind of actions, viz. one that concern the Pleas of the Crown, Placita Coronæ, or Placita Criminalia, another that concern Common Pleas, Placita Communia ſeu Civilia. Of that which concerneth Pleas of the Crown, Littleton ſpeaketh hereafter in this Chapter. Of actions concerning Common Pleas, Littleton ſpeaketh in this place. And theſe are threefold (that is to ſay) Real, Perſonal, and Mixt. Placitorum aliud perſonale, aliud reale, aliud mixtum. Or Actionum quædam ſunt in

Glan. l. 1. c. 1. Bract. l. 3. fo. 101. Brit. fo. 71. Flet. l. 1. c. 15. & 16.

Mir. c. 2. ſect. 1. Bract. ubi ſup. Flet. l. 1. c. 1.

¶ ITem quant al releales dactions reals et perſonals, il eſt iſſint que aſcuns actions ſont mixt en le realty et en le perſonaltie, ſicome un action de Waſte ſue enders tenant a terme de vie, ceſt action eſt en le realtie, pur ceo que le lieu Waſte ſerra recober. Et auxy en le

ALſo as to releaſes of Actions Reals, and Perſonals it is thus. Some actions are mixt in the realty and in the perſonalty, as an action of waſt ſued againſt Tenant for life. This Action is in the Realty, becauſe the place waſted ſhall be recovered, and alſo in the Perſonalty, becauſe per-

personaltie, pur ceo que treble damages serront recovers p le tortious Wast fait p le tenant, & pur ceo en cest action, un releas dactions reals est bon plee en barre, et issint est un releas dactions personals.

treble damages shall be recovered for the wrongful waste done by the Tenant; And therefore in this action a release of actions reals is a good plea in bar, and so is a Release of actions personals.

Rem, quædam in Personam, & quædam mixtæ. And generally. Actio is defined. (j) Actio nihil aliud est quam jus prosequendi in judicio quod sibi debetur. Or Action nest autre chose que loial demande de son droit.

(j) Vide Sect. 444. 5 act. lib. fol. 30. Fleta. l. 1. cap. 1. Mirror. 2 sect. 2.

(k) And by the release of all Actions, causes of Action be released, but within a submission of all actions to arbitrement, causes of action are not contained.

(k) Lib. 8. 153. Altham's case. 5 H. 5. Dyer. 5 Mar. 157. Vide 36 H. 8. Vid. 42. E. 3. 23.

¶ *Tenant pur vie.* And so it is if it be brought against tenant for years, because it agreeth with the reason of Littleton here rendred, viz. that the place wasted shall be recovered, and therefore soundeth in the realty.

¶ *Auxy en le personaltie pur ceo que treble damages serra recovers,* which do sound in the personalty. Wherefore Littleton concludeth, that in an Action mixt a release of all Actions reals is a good bar, and so is a release of all Actions personals.

And here is to be observed a diversity between the act of the party, and an act in law, for a man by his own act cannot alter the nature of his Action, and therefore if the lessee for life or lessee for years do waste, now is an Action of waste given to the lessor, wherein he shall recover two things, viz. the place wasted, and treble damages; in this case if the lessor release all actions reals, he shall not have an Action of waste in the personalty only. And if he release all Actions personals he shall not have an Action of waste in the realty only.

(l) And so it is if the lessee doth waste, and after surrendreth to the lessor his estate, and the lessor accept thereof, the lessor shall not have an action of waste.

(l) 19 H. 6. 66. 14 H. 6. 14, 14 E. 2. Waste 93. 14 H. 8. 14. 35 H. 8. Br. Waste.

But by act in law the nature of the action may be changed, as if a man make a lease pur terme dauter vie, and the lessee doth waste, and then Cesty que vie dyeth, an Action of waste shall lie for damages only, because the other is determined by act in law.

And again, hereupon is another diversity to be observed, that in case when an action is well begun, and part of the Action determineth by act in law, and yet the like action for the residue is given, there the writ shall not abate but proceed. But where by the determination of part the like action remaineth not for the residue, there the Action well commenced shall abate. As if an Action of Waste be brought against tenant, pur terme dauter vie, and hanging the writ Cesty que vie dieth, the writ shall not abate, but the plaintif shall recover damages only, because if Cesty que vie had died before any action brought, the lessor might have an action of waste for the damages: So if an Ejectione firme be brought, and the term incurreth hanging the action, yet the action shall proceed for damages only, because an Ejections doth lie after the term for damages only. But if tenant pur auter vie, bring an assise, and Cesty que vie dyeth hanging the writ, albeit the writ were well commenced, yet the writ shall abate, because no assise can be maintainable for damages only.

11 H. 8. 43. 9 E. 4. 56. 24 E. 3. 72. 18 E. 3. 28. 9 H. 6. 38.

So if an action of waste be brought by Baron and Feme in remainder, in especial tail and hanging the writ, the wife dieth without issue, the writ shall abate, because every kind of action of waste must be ad exhæredationem.

2 H. 4. 22. 6 E. 1. briefe 807.

If a writ of Annuity be brought, and the Annuity determineth hanging the writ, the writ failed for ever, because no like action can be maintained for the arrerages only, but for the Annuity and arrerages.

34 H. 6. 10. 9 E. 4. 39. 14 H. 7. 31. 18 E. 3. Scire facias 19.

But where damages only are to be recovered, there albeit by act in law, the like action lyeth not afterwards, yet the action well commenced shall proceed, (m) as if a conspiracy be brought against two, and one of them dyeth hanging the writ, it shall proceed.

(m) 22 R. 2. briefe 888, 18 E. 4. 1.

And in an assise of Novel disseisin, a writ of Annuity, quare impedit, and other mixt actions, a release of actions reals is a good plea, and so it is of a release of actions personals.

2 H. 4. 13. 9 H. 6. 57.

But if three Joyntenants be disseised, can they arraign an assise, and one of them release to the Disseisor all actions personals, this shall bar him, but it shall not bar the other plaintif, for having regard to them the realty shall be preferred. & omne majus trahit ad se minus dignum. (n) And in a writ of Ward brought by two, the release of the one shall not grieve the other, but shall enure to his benefit, for he shall recover the whole ward, and hold his companion out.

30 H. 6. Bar 53.

(n) 30 H. 6 ubi supra. 45 E. 3 fol. 6 18 E. 3. fol. 56. 21 H. 6. 18 a.

But here a diversity is to be observed between real actions, wherein damages are to be

recovered at the Common Law, as in an aſſiſe, &c. and real actions where damages are not to be recovered by the Common Law, but are given by the (o) Statute, for there a releaſe of all actions perſonals is no bar, as in the Writ of Dower, Entrie ſur diſſeiſin in le per, &c. Mordanc', Aiel, &c.

(o) Morton cap. 1. in dower. Glouc. cap. 1.

Sect. 493.

¶ ET en Quare impedit, un releas dactions perſonals eſt bone plee, & iſſint eſt un releaſe dactions reals, Per Martin, Qd' fuit conceſſum. Hill. 9. H. 6. 57.*

AND in a *Quare impedit*, a releaſe of actions perſonals is a good plea, and ſo is a releaſe of actions reals, *Per Martin, Quod fuit conceſſum. Hill. 9. H. 6. fol. 57.*

9. H. 6. 57.
22. H. 6. 27. b.

¶ This is an addition to Littleton, which although it be Law, and the Book truly cited, yet I paſs it over. But yet note by the way, that a releaſe of actions perſonals is alſo a good bar in a Quare impedit, becauſe it is an action mixt.

Sect. 494.

¶ LE diſſeiſor bien poet pleder, &c.

Nota, every man ſhall plead ſuch pleas as are proper for him, and apt for his defence to be pleaded. (q) As a diſſeiſor that hath nothing in the land may plead a releaſe of actions perſonals, becauſe damages are to be recovered againſt him, and therefore for his defence he may plead it, but a releaſe of actions reals he cannot plead, becauſe he hath no eſtate in the land, and none ſhall plead a releaſe of actions reals in an aſſiſe, but the tenant of the land. Et ſic de cæteris. But the tenant in an aſſiſe ſhall plead a releaſe of actions perſonals to the Diſſeiſor, for that plea proveth that the Plaintif hath no cauſe of action againſt him.

(q) 11. Aſſ. 9. 18. E. 3. 2. 23. 24. 31. E. 3. quare Imp. 161. 7. E. 3. 5. 9. E. 3. 6. 39. E. 3. 30. 22. E. 3. 2. 13. H. 4. 7. 3. E. 2. quare Imp. 44. 38. E. 3. 30. 31. 5. E. 3. 26. 21. E. 3. 16. 17. 5. H. 7. 34. 8. H. 5. 14. 22. H. 6. 28. 26. 1. H. 7. 34. 27. E. 3. 81. 32. H. 6. 25. b. 17. Aſſ. 25. 2. H. 7. 14. 13. H. 8. 13. 14. 44. E. 3. 12. 46. E. 3. 13. 16. E. 4. 11. 24. E. 3. 34. 4. E. 4. 18. 7. H. 4. 34. 2. R. 2. encumbent 4. 33. E. 3. quare Imp. 194.

13. H. 4. 2. a.

¶ ET meſme le maner eſt en aſſiſe de Novel diſſeiſin, pur ceo que il eſt mixt en le realtie, et ẽ le perſonalty. Mes ſi un tiel aſſ. ſoit arraigne enter le diſſeiſor et le tenant, le diſſeiſor bien poit plede un releas dactions perſonals, pur barrer laſſ. mes nemy un releas dactions reals, car nul pledera releas dactions reals en aſſ. forſq; l' tenant.

IN the ſame manner it is in an Aſſiſe of *Novel diſſeiſin*, for that it is mixt in the realty and in the perſonalty; but if ſuch an Aſſiſe be arraigned againſt the Diſſeiſor, and the Tenant, the Diſſeiſor may well plead a releaſe of actions perſonals to bar the Aſſiſe, but not a releaſe of actions reals, for none ſhall plead a releaſe of actions reals in an Aſſiſe, but the tenant.

If the Diſſeiſee releaſe to the Diſſeiſor all actions reals, and the Diſſeiſor maketh a feoffment in fee, and an Aſſiſe is brought againſt them, the Feoffee ſhall not plead the releaſe to the Diſſeiſor, for that he is not privy to the releaſe, for a releaſe of Actions ſhall only extend to privies.

If a Diſſeiſor make a leaſe for life the remainder in fee, and the Diſſeiſee releaſe all Actions to the tenant for life, after the death of tenant for life, he in the remainder ſhall not plead the ſaid releaſe.

If the Diſſeiſee releaſe all actions to the Diſſeiſor, and die, this doth bar him but for his life, for after his decеaſe his heir ſhall have an Action (r) as ſome have ſaid. And hereby may appear a manifeſt diverſity between a releaſe of a Right, and a releaſe of Actions.

(r) 19. H. 6. 23. 1.

Sect.

Sect. 495.

¶ Item, en tiels actions reals q̄ dobient deſtre ſue enders le tenant del franktenement, q̄ l' tenant ad un releas dactions reals del demandant fait a luy devant le briefe purchaſe, et il plede ceo, il eſt bon plee pur l' demandant adire, que celuy que pleda le plee navoit rien en le franktenement al temps del releas fait, car adonque il navoit cauſe daver aſcun action real enders luy.

ALſo in ſuch Actions Reals which ought to be ſued againſt the tenant of the Free-hold, if the tenant hath a releaſe of actions reals from the Demandant made unto him before the Writ purchaſed, and he plead this, it is a good plea for the Demandant to ſay, that he which pleads the Plea had nothing in the Freehold at the time of the releaſe made, for then he had no cauſe to have an action real againſt him.

¶ This is evident enough by that which hath been ſaid, that a releaſe of all actions reals muſt be made to him that is Tenant of the land, becauſe a real action muſt be brought againſt ſuch a Tenant.

Sect. 496.

¶ Item en tiel cas ou home poet enter en Terres ou Tenements, et autry poit aver un Action real de ceo que il done p̄ la Ley enders le Tenant, q̄ en tiel caſe le demandant releſſa al tenant touts maners de actions reals, uncore ceo ne tolle le demandant de ſon entrie, mes le demandant bien poit enter nient contreſtant tiel releas, pur ceo que nul choſe eſt releſſe forſq̄ lation, &c.

ALſo in ſuch caſe where a man may enter into Lands or Tenements, and alſo may have an Action real for this, which is given by the Law againſt the Tenant, if in this caſe the Demandant releaſeth to the tenant all maner of Actions reals, yet this ſhall not take the Demandant from his entry, but the Demandant may well enter notwithſtanding ſuch releaſe, for that nothing is releaſed but the Action, &c.

¶ *Poet enter.* Here it appeareth, That where a man may enter, a Releaſe of all Actions doth not bar him of his right, becauſe he hath another remedy, viz. to enter. And this is agreeable with the authority of our (ſ) Books. But where his entry is not lawful, there a Releaſe of all actions is by conſequence a bar of his right, becauſe he hath releaſed the means whereby he might recover his right. As if the Diſſeiſee releaſe all actions to the heir of the Diſſeiſor, which is in by diſcent, he hath no remedy to recover the land, but yet the Diſſeiſee hath a right, for that he hath releaſed his action, & not his right, as ſhall be ſaid hereafter in the Chapter of Remitter in his proper place. If the heir of the Diſſeiſor make a feoffment in fee to two, & the Diſſeiſee releaſeth to one of the feoffees all actions, and he dieth, the Survivor ſhall not plead this releaſe for the cauſes abovelaid. And hereby alſo again appeareth another diverſity between a releaſe of a right, and a releaſe of actions.

(ſ) 18. E. 3. 34. 19 E. 3. Title 55.

19.Aſſ.3. 20.E.3.19.6. 19.H 6.4.6.21.H.7. 23.b. 7.H.6.6.

It is to be obſerved when a man hath ſeveral remedies for one and the ſelf ſame thing, be it real, perſonal, or mixt, albeit he releaſeth one of his remedies, he may uſe the other.

Sect. 497.

¶ EN meſme le maner eſt de choſes perſonals, ſicom home a tort prent mes biens, ſi jeo releſſa a luy touts actions perſonals, uncore jeo puiſſe p̄ le ley prender mes biens hors de ſon poſſeſſion.

IN the ſame manner is it of things perſonal, as if a man by wrong take away my goods, if I releaſe to him all actions perſonals, yet I may by the Law take my goods out of his poſſeſſion.

This of it ſelf is evident.

Sect. 498.

Glanv. lib. 10. cap. 13.

¶ BRieſe de *detinue*. Breve de detentione dicitur à Detinendo, becauſe Detinet is the principal word in the Writ. And it lieth where any man comes to goods either by delivery, or by finding. In this Writ the Plaintif ſhall recover the thing detained, and therefore it muſt be ſo certain as it may be known, and for that cauſe it lieth not for money out of a bag, or cheſt, and ſo of corn out of a ſack, and the like, theſe cannot be known from other. (t) A man ſhall have an action of Detinue of Charters which concern the inheritance of his land if he know the certainty of them, and what land they concern, or if they be in Bag ſealed, or Cheſt locked, though he knoweth not the certainty of them: and it is good policy (if poſſibly he can) in that caſe to declare of one Charter in eſpecial. (u) and then the Defendant ſhall not wage his Law. (x) An action of Detinue for Charters doth ſound in the reality, for therein ſummons and ſeverance lieth, and in Detinue of goods a Capias doth lye, but for Charters in ſpecial a Capias lyeth not, and yet a releaſe of actions perſonals in a Writ of Detinue of Charters is a good bar.

42.E.3.2.

(t) 41.E.3.2. 8 H.6.18. 28.29. 21.E.3 28. 3.H.6.19. 20.H.6.4. 9.H.6.18.

(u) 10.H.6.20.21.H.6. 1. 14.H.5.4. 14.H.4. 23.24.27.

(x) 20.H.6.45.19.E.3. Severance 14. 31.E.3. ib.32. 42.E.3.13. 40.E 3.25.

¶ AUry ſi jeo ay aſt cauſe dañ briefe de Detinue de mes biñs vers un auter, coment q̄ jeo releſſa a luy touts actions perſonals, uncore jeo puiſſe per le ley prendre mes biens hors d̄ ſon poſſeſſion, pur ceo que nul droit d̄ les biens eſt releſſe a luy, mes ſolement laction, &c.

ALſo if I have any cauſe to have a Writ of Detinue of my goods againſt another, albeit that I releaſe to him all actions perſonals, yet I may by the Law take my goods out of his poſſeſſion, becauſe no right of the goods is releaſed to him, but only the action, &c.

Sect. 499.

¶ PEr cauſe del ſtatute. That is to ſay, the Statute of 4.H.4.c.7. and 11.H.6.c.4.

¶ *Car ſil voet pleder le releaſe generalment.* Here it appeareth, that when the Statute had given the action real a-

¶ ITem ſi hom ſoit diſſeiſie, & le diſſeiſor fait feoffment a diverſ perſons a ſon uſe, et le diſſeiſor continualment prift les profits, &c. et le diſſeiſee releſſa a luy

ALſo if a man be diſſeiſed, and the diſſeiſor maketh a feoffment to divers perſons to his uſe, and the diſſeiſor continually taketh the profits, &c. & the diſſeiſee releaſe touts

touts actions reals, et puis il suist vers luy bre Dentre en nature dalse p cause de lestatute, pur ceo que il prent les profits, &c. Quære, coment le disseisor serra aide per le dit releas: car il voile pleder le releas generalment, donques le demandant poit dire q̄ il navoit riens en le franktenement al temps del releas fait, & sil pleda releas especialment, donques il covient conustr un disseisin, et donques puit le demandant enter en le fre, &c. p̄ son conusans de l'disseisin, &c. Ses peradventure p especial pleader il luy poit bar d̄ lactiō que il suist, &c. coment le demandant poit enter.

to him all actions reals, and after he sueth against him a Writ of entry in nature of an assise by reason of the statute, because he taketh the profits, &c. *Quære*, how the disseisor shall be aided by the said release, for if he will plead the release generally, then the demandant may say that he had nothing in the freehold at the time of the release made, and if he plead the release specially, then he must acknowledge a disseisin, and then may the demandant enter into the land, &c. by his acknowledgment of the disseisin, &c. but peradventure by special pleading he may bar him of the action which he sueth, &c. though the demandant may enter.

gainst the perour of the profits, it enableth him to take and plead a Release of all actions reals, and yet he hath neither Jus in re, nor jus ad rem, which point is worthy of observation for manifestation of the equity of the law. 3. H. 7. 2.

¶ *Donques il vient conustre un disseisin, &c.* In a Writ of Dower the Tenant pleaded that before the writ purchased A. was seised of the land, &c. until by the Tenant himself he was disseised, and that hanging the Writ A. recovered against him, &c. judgment of the Writ, and adjudged a good plea, in which plea the Tenant confessed a Disseisin in himself. 15. E. 4. 4. b.

¶ *Donques poit le demandant enter.* So might he have done in this case that Littleton putteth, albeit the Tenant confessed no disseisin. And therefore it is no prejudice to the Tenant to confess a disseisin in himself, &c. and then as Littleton here holdeth, the action shall be barred.

But the reader is to observe, that now by the Statute of 27. H. 8. cap. 10. which executes the possession to the use, all the Statutes against Cesty que use, or perour of the profits have lost their force. 28 H. 8. Dier. 32. 27. H. 8. ca. 10.

Sect. 500.

¶ Item si home suist appeale d̄ felony del mort son ancestor enters un auter, coment que lappellant relessa al defendant touts maners dactions reals et psonals eo ne aidera my le defendant, pur ceo que ceo appeal nest pas

ALso if a man sue an appeal of felony of the death of his ancestor against another, though the appellant release to the defendant all manner of actions real and personal, this shall not aid the defendant, for that this appeal is not

¶ OUr Author having spoken of Common Pleas, now treateth of certain Pleas Criminal, or Pleas of the Crown, whereof it is said, (a) Item, criminalium alia majora, alia minora, alia maxima, secundum criminum quantitatem; Sunt enim Crimina Majora & dicuntur capitalia eò quod ultimum inducunt supplicium, &c. Minora verò, quæ fustigationem inducunt, vel pœnam pilloralem, vel tumboralem, vel carceris (a) Brac. l. 3. f. 101. b.

carceris incluſionem, &c.

(b) Criminalium quædam ſententialiter mortem inducunt, quædam vero minime. (c) De peche eſt briefe diviſion, car eſt mortal ou venial ſolonque ceo que appiert es paines. And that crime is called mortal or corporal: mortal, becauſe it deſerveth death; & ſuch crimes are called venial, as may be redeemed or ſatisfied by ſome other puniſhment than by death.

(b) Flet. lib. 1. cap. 15.

(c) Mir. c. 1. ſect. 4. & c. 4. des paines en divers manners.

¶ *Appeale de Felonie.* (x) Appellum ſignifieth Accuſatio, an Accuſation, and therefore to appeal a man is as much as to accuſe him, and in (y) ancient Books he that doth appeal is called Accuſator, and is peculiarly in legal ſignification applied to Appeals of three ſorts. Firſt, of wrong to his Anceſtor, whoſe heir male he is, and that is only of death, whereof our Author here ſpeaketh. The ſecond is of wrong to the husband, & is by the wife only of the death of her husband to be proſecuted. The third is of wrongs done to the Appellants themſelves, as Robbery, Rape, and Mayhem. The word Appellum is derived of Appeller, to call, becauſe Appellans vocat reum in judicium. He calleth the Defendant to judgment, and the Plaintif is called the Appellant.

x) Mir. c. 2. ſect. 7. Bract. lib. 3. f. 137. Brit. c. 22. 23. Flet. l. 1. c. 31, 32, 33.

(y) Glanv. lib. 7. cap. 9. Et lib. 14. ca. 1. & 3.

¶ *Appeal.* Appellatio is a removing of a cauſe in any Eccleſiaſtical Court to a Superior, but of this there needeth no ſpeech in this place.

24. H. ca. 12. 1. El. ca. 1.

¶ *De mort.* Appeal of death is of two ſorts, of Murder & of Homicide. Murder is when one is ſlain with a mans will, and with malice prepenſed or forethought. Homicide as it is legally taken, is when one is ſlain with a mans will, but not with malice prepenſed. Chance-medly, or Per infortunium, is when one is ſlain caſually, and by miſadventure without the will of him that doth the act, whereupon death inſueth, but of this no Appeal doth lye. Murder cometh of the Saxon word Mordreu.

Were is an old Saxon word ſometime written Wera, and ſignifieth the price of the life of a man, Eſtimatio capitis, that is, ſo much as one paid for the killing of a man, by which it appeareth, that ſuch government was in thoſe days, as ſlaughters of men were moſt rarely committed, as Maſter Lambard collecteth. And you ſhall not read of any inſurrection or rebellion before the Conqueſt, when the view of Frankpledge and other ancient Laws of this Realm were in their right uſe.

Lamb. Expoſ. verb. Eſtimatio. Flet. lib. 1. ca. 42. Hoved. fo. 344.

¶ *Mes ſil releaſe al Defendant touts manners d' actions, &c.* And the reaſon is, for that then all actions, as well criminal as real, perſonal and mixt, be releaſed. But a Releaſe of all actions real and perſonal cannot bar an Appeal of death, becauſe that Releaſe extendeth to common or civil actions, and not to actions criminal: but Releaſes of all actions criminal or mortal, or concerning Pleas of the Crown, are good bars to an Appeal of death, and ſo the (&c.) in the end of this Section is well explained.

21. H. 6. 16.

action real, entant que lappellant ne recovera aſcun realtie en tiel Appeale: Mes tiel appeale neſt pas action perſonal, entant que le tort fuit fait a ſon Auncеſtor, et nemy a luy. Mes ſil releſſa a le Defendant touts manners Actions, donque il ſerra bone barre en Appeale. Et iſſint home poit beyer que releaſe de touts maners dactions, eſt melior que releas de actions reals & perſonals, &c.

an action real, in as much as the Appellant ſhall not recover any Realty in ſuch Appeal, neither is ſuch Appeal an action perſonal, in as much as the wrong was done to his Anceſtor, and not to him. But if he releaſe to the Defendant all manner of Actions, then it ſhall be a good bar in an Appeal. And ſo a man may ſee that a Releaſe of all manner of Actions is better than a releaſe of Actions reals and perſonals, &c.

Sect. 501.

¶ Item en appeale de Robberie, ſi l'defendant voil pleade un releaſe de l'appellant de touts actions perſonals, ceo ſemble nul Plee. Car action del Appeale, lou l'apellee aũa judgement de mort, &c. eſt pluis hault que action perſonal eſt, et neſt pas proprement dit action perſonal: Et pur ceo ſi le defendant voiloit plead un releaſe del Appellant de barret luy d'appeale, en teſt caſe il covient d'aver un releaſe d' touts maũs d'appeales, ou touts manners d'actions, cõe il ſemble, &c.

ALſo in an Appeal of Robbery, if the Defendant will plead a releaſe of the Appellant, of all actions perſonals, this ſeemeth no plea: for an action of Appeal where the Appellee ſhall have judgment of death, &c. is higher than an action perſonal is, and is not properly called an action perſonal, and there if the Defendant will plead a releaſe of the Appellant, to bar him of the Appeal, in this caſe he muſt have a releaſe of all manner of Appeals, or all manner of Actions, as it ſeemeth, &c.

¶ *Robberie.* Roboria properly is when there is a felonious taking away of a mans goods from his perſon: and it is called Robbery, becauſe the goods are taken as it were de la Robe, from the Robe, that is, from the perſon: but ſometimes it is taken in a larger ſenſe. 22. Aſſ. 39. W. 1. cap. 20.

¶ *Judgement de mort, &c.* By this (&c.) is implied Appeals of Rape, of Arſon or Burning, of Felony or Larceny, for therein alſo is judgment of death, and are without our Authors reaſon.

¶ *Come il ſemble, &c.* It is to be underſtood, That firſt a releaſe of all actions criminal, mortal, or concerning Pleas of the Crown. Secondly, a releaſe of all Actions generally. Thirdly, a releaſe of all Appeals. And laſtly, a releaſe of all Demands are good here in all theſe kinds of Appeals. V. Sect. 508.

Sect. 502.

¶ MEs en Appeal d' Mayhem un releaſe de touts manners d'actions perſonals eſt bone plee en Barre, pur ceo que en tiel action il ne recovera forſq; damages, &c.

BUt in Appeal of Mayhem a releaſe of all manner of actions perſonals is a good plea in Bar, for that in ſuch an action he ſhall recover nothing but damages.

¶ *Mayhem* Mahemium, membri Mutilatio, or Obtruncatio, cometh of the French word Mehaigne, and ſignifieth a Corporal hurt, whereby he loſeth a Member, by reaſon whereof he is leſs able to fight; as by putting out his eye, beating out his fore-teeth, breaking his ſcull, ſtriking off his arm, hand, or finger, cutting off his leg or foot, or whereby he loſeth the uſe of any of his ſaid members. Mir. c. 1. ſect. 9. Glanv. l. 14. c. 7. Bract. lib. 3. Tract. 2. c. 24. Brit. fo. 48. c. 25. Flet. lib. 1. ca. 8. Stanf. Pl. Cor. fo. 38. b. 28. E. 3. 94. 8. H. 4. 21.

¶ *Damages, &c.* V. Sect. 194.

¶ *Releaſe de touts manners Actions Perſonals eſt bone Plea, &c.* 21. H. 6. 16. For the reaſon is, for that every action wherein damages only are recovered by the Plaintif, is in law taken for an action perſonal.

Sect.

Sect. 503.

V.l.11.fo.39.41.in Metcalfs case upon what judgments & awards a Writ of Error doth lie.

¶ *Brief de Error.* This Writ lyeth when a man is grieved by any error in the foundation, proceeding, judgment, or execution, and thereupon it is called Breve de errore corrigendo. But without a judgment or an award in nature of a judgment no writ of error doth lie, for the words of the writ be, Si judicium redditum sit: & that judgment must regularly be given by Judges of Record, and in a Court of Record, & not by any other inferiour Judges in base Courts, for thereupon a Writ of false judgment doth lye. In this case of Utlawry upon Proceſs the judgment is given (in the County Court, which is no Court of Record) by the Coroners (saving in London judgment is given by the Recorder, and not by the Maior, who is Coroner by the Custom of the City)

Li.5 f.111.Foxleys case. Li.7 f.11.12 Jentlemans case.

15.Eliz.Dyer 317.

¶ Item ſi home ſoit utlage en Action perſonal per proces ſur le Original, et post bre Derror, ſi celuy a que ſuit il fuit utlage, poile pleader envers luy un releas d touts manners Actions Personals, ceo ſemble nul plee, car per le dit Action il ne recovera rien en perſonaltie forſque tantſolement de reverſer le Utlagarie: mes un Releaſe de Brieſe Derrour eſt bone plea.

A Lſo if a man be outlawed in an Action perſonal by proceſs upon the Original, and bringeth a Writ of Error, if he at whoſe ſuit he was outlawed, will plead against him a Releaſe of all manner of Actions perſonals, this ſeemeth no plea, for by the ſaid action he ſhall recover nothing in the perſonalty, but only to reverſe the Outlawry: But a Releaſe of the Writ of Error, is a good plea.

Lib 9 fol.119.8.Zanchars caſe.

for after the Defendant is Quinto exactus, and maketh default, the judgment is, Ideo utlagetur per judicium Coronatorum, and in London, Per judicium Recordatoris: ſo as by the Outlawry the plaintif recovers nothing, but the King taketh the whole benefit thereof, for the Law did intend, that the Defendant would rather appear and anſwer the plaintif, &c. than to forfeit all his Goods and Chattels, Debts and Duties to the King, by his default and contumacy. But Littleton is to be intended, that the Sherif do return the Exigent whereby the Outlawry appears of Record, or that the Outlawry be removed by Certiorari, for before that time that the Outlawry appear of Record, the Defendant doth not forfeit his goods, nor the Plaintif can be disabled, nor any writ of error doth lie in that caſe. And this is the cauſe that the goods of Outlaws cannot be claimed by preſcription, becauſe they are not forfeited until the Outlawry appear of Record. Vid. Sect 197. where it appeareth by Littleton, that the plaintif cannot be disabled by Outlawry, unleſs it appeareth of Record.

28.Aſſ.49.12.E.3. Utlag.3. 38 E 3.12. Mich. 4.& 5.El.Dyer f. 222. Vid.Sect.197.

¶ *Car per le dit Action il recovera rien en le perſonaltie.* Hereupon is to be obſerved a diverſity, when by the writ of error the plaintif ſhall recover, or be reſtored to any perſonal thing, as debt, damage, or the like, for then by the reaſon that Littleton here putteth, the releaſe of all actions perſonals is a good plea, for that the plaintif is to recover, or to be reſtored to ſomething in the perſonalty. And ſo likewiſe when land is to be recovered, or to be reſtored in a writ of error, a releaſe of all actions reals is a good bar. But where by a writ of error the plaintif ſhall not be reſtored to any perſonal or real thing, then a releaſe of all actions real or perſonal, is no bar, and therefore Littleton here putteth his caſe with great caution: If a man (ſaith he) by proceſs upon the original be outlawed, there in error he ſhall be reſtored to nothing in the perſonalty againſt the plaintif. But where by the Outlawry he forfeited all his goods and chattels to the King, he ſhall be reſtored to them, alſo thereby he ſhall be reſtored to the law, and to be of ability to ſue, &c. But if the plaintif in a perſonal action recover any debt, &c. or damages, and be outlawed after judgment, there in a writ of error brought by the Defendant upon the principal judgment, a releaſe of all actions perſonals is a good plea. And ſo it is where a judgment is given in a real action, a releaſe of all actions reals is a good bar in a writ of error brought thereupon.

1.H.4 6.

If

If the Tenant in a real action releaſe to the Defendant after recovery his right in the land, he ſhall not have a Writ of Error, for that he cannot be reſtored to the land. 9. H. 6. 47.

And ſo it is if debt, &c. or damages be recovered in a perſonal action by falſe Verdict, and the Defendant bringeth a Writ of Attaint, a (a) releaſe of all actions perſonals is a good bar of the Attaint, for thereby the Plaintiff is to be reſtored to the debt, &c. or damages which he loſt, the like Law is if a Judgment be given upon a falſe Verdict in a real action, a releaſe of all actions reals is a good bar in an Attaint. For both the Writ of Error, and the Writ of Attaint do enſue the nature of the former action, &c. (a) 26. H. 8. 3. b. 13. E. 4. 1. 2. 34. H. 6. 31. 35. H. 6. 19. 29. Aſſ. 35. 47. E. 3. 6.

And ſo it is if a Writ of Audita Querela be brought by the Defendant in the former action to diſcharge himſelf of an execution, a releaſe of all actions perſonals is a good bar, becauſe he is to diſcharge himſelf of a perſonal execution. 24. E. 3. 37.

¶ *Mes un releaſe de briefe de error eſt bone plea, &c.* So as in this ſpecial caſe here put by Littleton, wherein the Plaintiff is to recover or be reſtored to nothing againſt the party, yet for that the Plaintiff in the former action is privy to the Record, a releaſe of a Writ of Error to him is ſufficient to bar the Plaintiff in the Writ of Error of the ſuit, and be ration by the Writ of Error. And ſo note that an action real or perſonal doth imply a recovery of ſomething in the reality or perſonalty, or a reſtitution to the ſame, but a Writ implyeth neither of them, which is worthy of obſervation.

Sect. 504.

¶ Item ſi home recobera debt ou damages, & il releſa al Defendant touts maners dactions, uncore il puit lolement ſuer execution per Capias ad ſatisfaciendum, **ou per** Elegit, **ou** Fieri facias, **car execution per tiel briefe ne poit eſtre dit action.**

ALſo if a man recover Debt or damages, and he releaſeth to the Defendant all manner of Actions, yet he may lawfully ſue Execution by *Capias ad ſatisfaciendum*, or by *Elegit*, or *Fieri facias*: For Execution upon ſuch a Writ cannot be ſaid an Action.

¶ HEre appeareth a diverſity between an Action and an Execution. For regularly an Action is ſaid in his proper ſenſe to continue until Judgment be given, and after Judgment then doth Proceſs of Execution begin, and therefore a releaſe of all Actions regularly is (b) no bar of Execution, for the Execution doth begin when the Action doth end. And therefore the foundation of the firſt is an original Writ, and doth determine by the Judgment, and Writs of Execution are called Judicial, becauſe they are grounded upon the Judgment. Vide Sect. 233. 8. E. 3. 9. 4. E. 3. Attorney 18. 33. H. 6. 49. 34. H. 6. 51. (b) 13. H. 4. Releaſe 53. 19. H. 6. 3. 26. H. 6. Execution 7.

¶ *Per Cap. ad ſatisfaciendum.* This is a judicial Writ for the taking of the body in Execution until he hath made ſatisfaction: where a Capias ad ſatisfaciendum lyeth at the Common Law, and where it is given by Statute, you may read at large in my Reports. Sir William Herbert's caſe. lib. 3. fol. 11. b.

I have read two ancient Records touching the taking of the body in Execution, whereof to my remembrance, I never read any touch in our Books, yet I will recite them, and leave them to the judicious Reader. William de Walton brought an Action of Treſpaſs of breaking his Cloſe againſt John Martin, and upon not guilty pleaded, he was found guilty and damages aſſeſſed, whereupon Judgment was given that the Plaintiff ſhould recover his damages, Et quod prædictus Johannes capiatur. And the Record ſaith, Quod prædictus Johannes venit coram Domino Rege & reddidit ſe priſonæ, & quia conſtat Curiæ per inſpectionem corporis ipſius Johannis, quod idem Johannes eſt talis ætatis quod pœnam impriſonamenti ſubire non poteſt, ideo dictum eſt ei, quod eat inde ſine die. The other Record is, That Ellen Alloe brought an Appeal of robbery againſt John Boskiſeleke Clark, Richard Charta, and others, who pleaded not guilty, and were not found guilty: whereupon Judgment was given that they ſhould go quit, Et prædicta Elena pro falſo appello ſuo non committatur priſonæ, &c. (for (b) by the Statute ſhe ought to be impriſoned in that caſe for a Year.) But the Record ſaith, Quia eadem Elena prægnans fuit, & in periculo mortis, ipſa dimittitur per mainucaptionem, &c. ad habendum corpus uſque Quind. Michaelis, &c. Paſch. 14. E. 3. Rot. 108. coram Rege in Theſaur. Surrey. Mich. 41. E. 3. Rot. Q. coram Rege Cor. in Theſaur. (b) W. 2. cap. 12.

There be certain maxims in the Law concerning Executions, as taking ſome inſtead of many. Ea quæ in Curia noſtra rite acta ſunt, debitæ executioni demandari debent. Parum eſt latam eſſe ſententiam niſi mandetur executioni. Executio juris non habet injuriam. Executio eſt fructus & finis legis. Juris effectus in executione conſiſtit. Proſecutio legis eſt gravis, vexatio, executio legis coronat opus. Boni Judicis eſt judicium ſine dilatione mandare executioni. Favorabiliores ſunt executiones aliis proceſſibus quibuſcunque. But now let us hear what Littleton ſaith.

Per Elegit. This is alſo a judicial Writ, and is given by the Statute upon a recovery for debt or damages, or upon a Recognizance in any Court. And it is called a Writ of Elegit, for that according to the Statute that ſaith, (c) Sit de cætero in electione illius, &c. ſequi breve quod Vicecomes fieri faciat, &c. vel quod liberet ei, &c. The words of the Writ be Elegit ſibi liberari, &c. And thereupon it is called an Elegit. By this Writ the Sheriff ſhall deliver to the Plaintiff, Omnia catalla debitoris, (exceptis bobus & aſris carucæ) & medietatem terræ. And this muſt be done by an inquiſt to be taken by the Sheriff.

(c) W. 2. cap. 18.

When Littleton wrote, by force of certain Acts (d) of Parliament, execution might be had of Lands (beſides by force of the Elegit) upon Statutes Merchant, Statutes Staple, and Recognizances taken in ſome Court of Record, and ſince he wrote, upon a Recognizance or Bond taken by force of the Statute (*) of 23 H. 8. before one of the Chief Juſtices, or the Major of the Staple, and Recorder of London out of Term, which hath the effect of a Statute Staple. The manner of the Executions upon Body, Lands, and Goods, appeareth in the Statutes quoted in the margent.

(d) 11. E. 1. Stat. de Actone Burvell. 13. E. 1. de mercatoribus. 27. E. 3. cap. 22. Vide Fleta. li. 2. cap. 57. 25. E. 3. 53.
(*) 23. H. 8. cap. 6.

Since Littleton wrote, a profitable Statute hath been made (e) concerning Executions of Lands, Tenements, and Hereditaments, whereby it is provided that if after ſuch Lands, &c. be had and delivered in Execution upon a juſt or lawful title, wherewithal the ſaid Lands, &c. were liable, tied, or bound at ſuch time, as they were delivered or taken into Execution, ſhall be recovered, deveſted, taken, or evicted out of, or from the poſſeſſion of any ſuch perſon, &c. before ſuch times, as the ſaid Tenants by Execution their Executors or Aſſigns ſhall have fully levied their debt and damages, for the which the ſaid Lands, &c. were taken in Execution, then every ſuch Recoveror, Obliger, and Recognizee, ſhall have a Scire facias out of the ſame Court from whence the former Execution did proceed, againſt ſuch perſon or perſons as the former Execution was purſued, their Heirs, Executors, or Aſſigns, to have Execution of other Lands, &c. liable and to be taken in Execution for the reſidue of the debt or damages, Sed opus eſt interprete.

(e) 32. H. 8. cap. 5.

Therefore firſt it is to be known, that where the Tenant by Execution hath remedy given to him by Law after eviction, there the Statute extendeth not to it, for the Act ſaith by reaſon whereof, the ſaid Recoverors, Obligers, and Recognizers, have been clearly left without remedy, &c. and the body referreth to the preamble, and the party ought not to have double ſatisfaction, one by the former Laws, and another by this Statute.

Lib. 4. fol. 66. Fulwood's caſe.

And therefore if part of the Land, &c. be evicted from the Tenant by Execution, this Statute extendeth not to it, becauſe he ſhould hold the reſidue, till he be fully ſatisfied, and he muſt be contented if all be evicted ſaving one acre to hold that, though it be but a poor remedy: for no new Execution in that caſe he can have upon this Statute. Therefore if the Conuſe hath remedy in præſenti for part, or in futuro for all, or part, this Statute extendeth not to it.

Secondly, If a man be bound to A. in a Statute of a thouſand pounds, and by a later Statute to B. in a hundred pounds, and B. firſt extendeth, and then A. extendeth and liberty the Land from B. yet B. ſhall have no aid of the Statute, becauſe after the extent of A. ſhall re-enjoy the Land, by force of his former Execution.

Thirdly, If the wife of the Conuſor recover Dower againſt the Tenant by Execution, he ſhall hold over, and ſhall have no aid of this Statute.

Fourthly, If a man put out his Leſſee for years, or diſſeiſe his Leſſee for life, and after knowledge a Statute and Execution is ſued againſt him, and the Leſſees re-entre, no Tenant by Execution after the Leaſes ended, ſhall hold over, and have no aid of this Statute.

Fiftly, This Statute muſt not be taken literally, but according to the meaning, therefore where the letter is until he, &c. or his Aſſigns ſhall fully and wholly have levied the whole debt or damages: if he hath aſſigned ſeveral parcels to ſeveral Aſſignes, yet all they ſhall have the Land, but till the whole debt be paid.

Sixtly, Where the words be, for the which the ſaid Lands, &c. were delivered in Execution. A Diſſeiſor conveys lands to the King who granteth the ſame over to A. and his heirs to hold by fealty, and twenty pound rent, and after granteth the Seigniory to B. B. knowledgeth a Statute,

Statute, and execution is ſued of the Seigniory. A. dieth without heir, & the Conuſee entereth, and is euicted by the Diſſeiſee, he ſhall haue the aid of this Statute, and yet it is out of the letter of the law, for the Seigniory was deliuered in execution and not the Tenancy, but he was Tenant by execution of thoſe lands, and therefore within the Statute. But the perquiſite of a Villein being euicted is out of the Statute, for he is Tenant in fee ſimple thereof, and not Tenant by Execution.

Seuenthly, where the words be (deliuered and taken in execution) yet if after the Liberate, the Conuſee entreth (as he may) ſo as the land is neuer deliuered, yet is he within the remedy of this Statute, for he is Tenant by execution.

Eighthly, where the Statute ſaith, then euery ſuch recoueror, obligee, and recognizee ſhall, &c. and ſaith not, their executors, adminiſtrators, or aſſigns, but they are omitted in this material place, yet by a benigne interpretation this Statute ſhall extend to them, becauſe they are mentioned in the next precedent clauſe of the euiction, and the remedy muſt by conſtruction be extended to all the perſons that appear by the act to be grieued, a point worthy the obſeruation.

Ninthly, where the Statute giueth a Scire fac' out of the ſame Court, &c. if the record be remoued by writ of error into another Court, and there affirmed, the Tenant by execution that is euicted ſhall haue a Scire fac' by the equity of this Statute out of that Court, becauſe the Scire fac' muſt be grounded upon the record, Et ſic de ſimilibus.

Tenthly, where the ſtatute giueth the Scire fac' againſt ſuch perſon or perſons, &c. that were parties of the firſt execution, their heirs, executors, or aſſigns, &c. this muſt not be taken ſo generally as the letter is, for if the firſt execution were had againſt a purchaſor, &c. ſo as nothing was liable in his hands but the land recouered, if this land be euicted from Tenant by execution, no Scire fac' ſhall be awarded againſt him, his heirs, executors, or aſſigns, but if he hath other lands ſubject to the execution, then a Scire fac' lieth againſt him or his aſſigns, but not againſt his executors, neither in that caſe can he haue a Scire fac' upon this Statute againſt the firſt Debtor or Recognizor, becauſe it giueth it only againſt him, &c. that was party to the firſt execution, his heirs, executors, or aſſigns. But if there be ſeuerall aſſigns of ſeuerall parcels of lands ſubject to the execution, one Scire fac' upon this ſtatute ſhall lie againſt all the aſſigns. Sed eſt modus in rebus. This little taſte ſhall giue a light to the diligent reader, not only to ſee into the ſecrets of this ſtatute, but to others alſo of like nature.

And by the Statute of 23. H. 8. cap. 6. it is prouided that the obligee, &c. ſhall haue in euery point againſt ſuch recognizor, &c. like proceſs, execution, commodity and aduantage in euery behalf, as hath been had or made upon the ſtatute ſtaple, and under ſuch manner and form, as is for the ſame Statute ſtaple prouided: by force of which branch, if the Tenant by execution by force of the Act of 23. H. 8. be euicted, he ſhall haue the remedy prouided for Tenants by execution upon a ſtatute ſtaple by the Act of 32. H. 8. In like manner by force of that clauſe of 23. H. 8. if the extenders upon a ſtatute ſtaple, &c. do extend the lands, &c. at too high a rate, the obligee may pray that the extendors themſelues may take the lands, &c. at that rate, &c. by force of the ſaid ſtatutes of Acton Burnel, and De Mercatoribus. Alſo no execution ſhall be ſued againſt the heir within age.

But note that upon a writ of Elegit the plaintif cannot make any ſuch prayer, becauſe theſe ancient ſtatutes do extend to a ſtatute merchant, or a ſtatute ſtaple only, and neither to a recouery of debt or damages, nor to a recognizance in Court, and ſo hath it been reſolued. (f)

Note, it appeareth by the preamble of the ſaid Act of 32. H. 8. and by diuers (g) Books, that after a full and perfect execution had by extent returned and of record, there ſhall neuer be any re-extent upon any euiction: but if the extent be inſufficient in law, there may go out a new extent.

(h) If a man haue a Iudgment giuen againſt him for debt or damages, or be bound in a recognizance, and dieth his heir within age, or hauing two daughters, and the one within age, no execution ſhall be ſued of the lands by Elegit during the minority, albeit the heir is not ſpecially bound, but charged as Terre tenant (i) and ſo againſt an heir within age no execution ſhall be ſued upon a Statute Merchant or Staple, nor upon the obligation or recognizance upon the ſtatute of 23. H. 8. for it is excepted in the proceſs againſt the heir. Neither if the heir within age indow his mother ſhall execution be ſued againſt her during his minority.

Note, that by the ſtatute (k) of 27. E. 3. the execution of lands upon a ſtatute ſtaple is referred to the ſtatute merchant, and by the ſtatute De Mercatoribus no execution ſhall be had againſt the heir ſo long as he is within age.

Alſo ſince Littleton wrote, there is a right profitable ſtatute (l) made againſt fraudulent Feoffments, Gifts, Grants, &c. Iudgments and Executions, as well of lands and tene-

40. E. 3. 26. b. 44. E. 3. f. 10. 2. H. 4. 17. 15. H 7. 15.

(f) Mich. 4. & 5. Ph. & Mar. Bendloes, by all the Iuſtices of the Common pleas. 15. E. 3. Extent. 7.

(g) 15. E. 3. Extent. 7. 22. E. 3 Recovery in value. 22. 31. E. 3. Exten. 13 17. E. 3. 76. 15. E. 3. Scire fac. 115. 7. H. 4. 19. 22. Aſſ. 44. 22. E. 3. fol. ult. 44. E. 3. 10. 9 H. 7. 9. 15 H. 7. 15. 13. Eliz. Dier. 299. 29. H. 8. Stat. Merchant Br. 40.

(h) 11. E. 3 age 4. 15. E. 3. age 95. 24. E. 3. 28. 29. Aſſ. 7. 29. E. 3. 50. 47. Aſſ. 4 47. E. 3. 7. l. 43. f. 13. Sir William Herberts caſe. Brooke. age 23.

(i) Temps E. 1. Aſſ. 402. 417. 16. H. 7. 6. Licut. dentr. 545. Brooke. age. 33.

(k) 27. E 3. c. 22.

(l) 13. El z c. 5 Lib. 3. f. 80 &c. Twynes caſe. Lib 5. f 60. Gooches caſe.

Lib.6.fo.18.Pakemans caſe. Lib.10. f.56. the Chanc. of Oxfords caſe. See the Statutes of 3.H 7.cap.4.& 50E.3. cap.6. Mich.12.& 13 Eliz. Dier.295. 18.Eliz 51. Dier.

ments, as of Goods and Chattels, to delay, hinder, or defraud Creditors and others of their juſt and lawful actions, ſuits, debts, damages, penalties, forfeitures, heriots, mortuaries, and releaſes, for the expoſition of which and other Statutes ſee the authorities quoted in the margent.

And it is to be obſerved, that the words of the ſaid Act of 13. Eliz. are, Be it therefore declared, ordained, and enacted: and therefore like caſes in ſemblable miſchief ſhall be taken within the remedy of this Act, by reaſon of this word (Declared) whereby it appeareth what the law was before the making of this Act. But let us now return to Littleton.

W.2.cap 18.

¶ *Fieri facias.* This is a Writ mentioned in the ſaid Statute, but is a writ of Execution at the Common Law. And is called a Fieri facias, becauſe the words of the writ directed to the Sheriff be, Quod fieri facias de bonis & catallis, &c. and of thoſe words the writ taketh his denomination.

But note that a Capias ad ſatisfaciendum, is not mentioned in the ſaid Statute, becauſe no Capias ad ſatisfac' did lie at the Common Law upon a Judgment for debt, &c. or damages, but only when the original action was Quare vi & armis, &c. But latter Statutes have given a Capias ad ſatisfac' where debt, &c. or damages are recovered, as it appeareth at large (m) in Sir William Herberts caſe, whereunto I refer the reader.

(m)Lib.3.f.11. Sir William Herberts caſe.

And it is to be obſerved, that theſe three writs of execution ought to be ſued out within the year and the day after judgment, but if the plaintif ſueth out any of them within the year, he may continue the ſame after the year until he hath execution. And to none of theſe writs of Executions the Defendant can plead, but if he hath any matter ſince the judgment to diſcharge him of Execution, he may have an Audita querela, and relieve himſelf that way, but plead he cannot. As if the plaintif after releaſe unto the Defendant all Executions, yet in none of theſe three writs he ſhall plead it, but is driven to his Audita querela, as hath been ſaid.

Sect. 505.

¶ *Scire facias.* This is a judicial Writ and properly lieth after the year and day after judgment given, and is ſo called, becauſe the words of the writ to the Sheriff be, Quod Scire facias præfat' T. (being the Defendant) Quod ſit coram, &c. oſtenſurus ſi quid pro ſe habeat aut dicere ſciat, quare, &c. So as by the writ it appeareth that the Defendant is to be warned to plead any matter in Bar of Execution, and therefore albeit it be a judicial Writ, yet becauſe the Defendant may thereupon plead, this Scire facias is accounted in Law to be in nature of an action, and therefore

(n)19 H.6.3, 28.E.4.7.

(n) a Releaſe of all actions is a good bar of the ſame, and likewiſe a Releaſe of Executions is a good bar in a Scire facias, this writ was gi-

¶ Mes ſi apres lan et jour le plaintife doit ſuer un Scire facias, a ſacher ſi le defendant poit rien dire pur que le plaintife navera execution, donques il ſemble que tiel releas de touts actions ſerra bon plee en barr: Mes alcuns ont ſemble contrary, entant que le brieſe de Scire facias eſt un bre dexecution, & eſt daver execution, &c. Mes uncore entant que ſur m l' brieſe l' defendant poit pleader divers matrs puis l' judgment rendue de luy ouſter dexecution, come utlagary, &c. et divers auters

But if after the year and day the plaintif will ſue a *Scire facias*, to know if the defendant can ſay any thing why the plaintif ſhould not have execution, then it ſeemeth that ſuch releaſe of all actions ſhall be a good plea in bar. But to ſome ſeems the contrary, in as much as the writ of *Scire facias* is as a writ of execution, & is to have execution, &c. But yet in as much as upon the ſame writ the Defendant may plead divers matters after judgment given to ouſt him of execution, as outlawry, &c. and divers other matters, this

matter,

matters, ceo bien poit eſtre dit action, &c.

may be well ſaid an action, &c.

ben in this caſe by the Statute of W. 2. for at the Common Law if the Plaintif had forceaſed to ſue Execution by Fieri facias, or Levari facias a year and a day, he had been driben to his new original. W. 2. cap. 45. 8. E. 3. 297. 298. 18. E. 2. 33 lib 3. fo. 12. Sir William Herberts caſe. Fleta. li. 2. c. 12.

¶ *Ceo bien poet eſte dit action.* Here is to be obſerved, that every writ whereunto the Defendant may plead, be it original or judicial, is in law an action.

Sect. 506.

¶ ET jeo croy, que en un Scire facias hors dun fine, un releas de touts manners dactions, eſt bon plee en barre.

AND I take that in a *Scire facias* upon a fine, a releaſe of all manner of actions is a good plea in bar.

This upon that which hath been ſaid, is evident of it ſelf.

Sect. 507.

¶ MES lou home recobera debt ou damages, et eſt accord̄ perenter eux, que le plaintife ne ſuet execution, donqz il covient q̄ le plaintife fait un releas a luy de touts maners dexecutions.

BUt where a man recovereth debt or damages, and it is agreed between them that the plaintif ſhall not ſue execution, then it behoveth that the plaintif make a releaſe to him of all manner of executions.

¶ IL *covient.* Albeit Littleton here ſaith, he ought or muſt, &c. yet there be other words which will releaſe an Execution without expreſs words of a releaſe of Execution.

As if a man releaſe all ſuits the Execution is gone, for no man can have Execution without prayer and ſuit, but the King only, and therefore if the King releaſeth all ſuits, it is no bar of his Execution, becauſe in the Kings caſe the Judges ought to award Execution Ex officio without any ſuit, but a releaſe of Executions doth bar the King in that caſe. And ſo note a diverſity between a releaſe of all actions, and a releaſe of all ſuits. 19. H. 6. 4. 26. H. 6. Execution 4. l. 8. fo. 153. Ed. Althams caſe. Vid. Brook. tit. Releaſes. 87.

So if the body of a man be taken in Execution, and the Plaintif releaſeth all actions, yet ſhall he remain in Execution, but if he releaſe all debts or duties he is to be diſcharged of the Execution, becauſe the debt or duty it ſelf is diſcharged. 26. H. 6. tit. Execution 7

In the ſame manner if Execution be ſued upon a Recognizance by Elegit, and the Conuſee by Deed make a Defeaſance, that if the Conuſor doth ſuch an act, that then the Recognizance ſhall be void, by this the execution is diſcharged. 20. Aſſ. p. 7.

So it is if judgment be given in an action of debt, and the body of the Defendant is taken in Execution by a Capias ad ſatisfac' and after the plaintif releaſeth the Judgment, by this the body ſhall be diſcharged of the Execution. 26. H. 6. ubi ſupra.

If the plaintif after judgment releaſe all demands the Execution is diſcharged, as ſhall appear by that which next hereafter ſhall be ſaid.

If A. be accountable to B. and B. releaſeth him all his duties, this is no bar in an action of account, for Duties extend to things certain, and what ſhall fall out upon the account is incertain; and albeit the Latine word is Debita, yet duties do extend to all things due that is certain, and therefore diſchargeth Judgments in perſonal Actions, and Executions alſo. 20. H. 6. 6. per Paſtor.

Sect.

Sect. 508.

¶ *Touts manners de demands.*

¶ *Demande*, Demandum is a word of Art, and in the underſtanding of the Common Law is of ſo large an extent, as no other one word in the law is, unleſs it be Clameum, whereof Littleton maketh mention, Sect. 445. And here is to be obſerved, that there be two kind of demands or claims, viz. a demand or claim in Deed, and a demand or claim in Law; or an expreſs, and an implied demand or claim. Littleton here putteth examples of both, and firſt he ſpeaketh of real actions, wherein he that bringeth his action maketh his demand, and therefore he is properly called a Demandant, and he that defendeth is called Tenant, becauſe he is Tenant of the Freehold of the land.

Lit. Sect. 445. Brack. l. 1. c. 10. Pl. Com. Steills caſe 359. &c.

¶ Item ū home releſſa a un auter touts manners de demands, ceo eſt le plus melior releaſe a luy a que le releaſe eſt fait que il poet aver, et plus urera a ſon advantage. Car per tiel releaſe de touts manners de demands, touts maners dactions reals, perſonals, et actions dappeale ſont ales et extincts, et touts manners de executions ſont ales et extincts.

ALſo if a man releaſe to another all maner of demands, this is the beſt releaſe to him to whom the Releaſe is made, that he can have, and ſhall enure moſt to his advantage. For by ſuch releaſe of all manner of demands, all manner of actions reals, perſonals, and actions of Appeal, are taken away and extinct, and all manner of executions are taken away and extinct.

38. H. 8. tit. Releaſ. Br. 9. 6. H. 7. 15. 19. H. 6. 3. 4. 20. Aſſ. Pl. 5. 40. E. 3. 22. 49. E. 3. 7. b. 50. Aſſ. Pl. 6. 14. H. 4. 8. 13. R. 2. tit. Avow. 89. 1. 8. f. 153. Ed. Althams caſe. Lit. 170. Sect. 748. Dyer 5. El. 217.

Of demands implied, or in law, Littleton putteth examples: Firſt, of all actions perſonals. Secondly, of Appeals, for in both theſe caſes he that bringeth the ſuit is called Plaintif, and not Demandant, and he that defendeth is called Defendant. Thirdly, of Executions. Fourthly, of title or right of entry, either by force of a condition, or by any former right, which meerly is a demand or claim in law, but otherwiſe it is in the Kings caſe. Fifthly, of a rent ſervice, rent charge, common of paſture, &c. which alſo are meer demands or claims in law. All which, Littleton here and in the two next Sections following, putteth but for examples, for by the releaſe of all demands other things alſo be releaſed, as rents ſeck, all mixt actions, a warranty which is a covenant real, and all other covenants real and perſonal, Eſtovers, all manner of Commons and profits apprender, conditions before they be broken or performed, or after, annuities, recognizances, Statutes Merchant or of the Staple, obligations, contracts, &c. are releaſed and diſcharged.

Sect. 509.

¶ ET ū home ad title de entry en aſcuns terres ou tenements, per tiel Releaſe ſon title eſt ale.

¶ Sed quære de hoc, car Fitz-James chiefe Juſtice de Engleterre tient le contrary, pur ceo que entre ne poit proprement eſtre dit demande, P. 19. H. 8. *

AND if a man hath title of entry into any lands or tenements, by ſuch a Releaſe his title is taken away.

¶ *Sed quære de hoc*, for *Fitz-James* chief Juſtice of England holdeth the contrary, becauſe an Entry cannot be properly ſaid a Demand.

¶ *Title.*

¶ *Title.* Here Title is taken in the largest Term, including Right also. 34. H. 8. tit. Releas. 8. 9. Chaunceys case. lib. 8. fo. 153. Ed. Althams case.

¶ * Sed quære, &c. This is an Addition, and no part of Littleton, and the opinion herein cited clearly against Law.

Sect. 510.

¶ ET il home ad Rent ſervice ou Rent charge, ou Common de Paſture, &c. per tiel releſe de touts manners de demaunds fait al Tenaunts de la Terre, dont le ſervice ou le rent eſt iſſuant, ou en que le Common eſt, le ſervice, le Rent, & le Common eſt ale & extinct, &c.

AND if a man hath a Rent ſervice or Rent charge, or Common of Paſture, &c. by ſuch a releaſe of all manner of demands made to the Tenants of the Land out of which the ſervice or the Rent is iſſuing, or in which the Common is, the ſervice, the Rent and the Common is taken away and extinct, &c.

This upon that which hath been ſaid, needeth no further explication.

Sect. 511.

¶ ITem il home releſſa a un auter touts manners de quarrels, ou touts controverſies ou debates enter eux, &c. Quære a quel matter & a quel effect tiels parols ſoy extendont, &c.

ALſo if a man releaſeth to another all manner of quarrels, or all controverſies or debates between them, &c. *Quære* to what matter and to what effect ſuch words ſhall extend themſelves, &c.

¶ *Quarrels.* Querela, a querendo, this plea concerneth perſonal actions, or mixt at the higheſt, for the Plaintiff in that is called Querens, and in moſt of the Writs it is ſaid Queritur. And yet if a man releaſe all Querelas, a means verb being taken moſt ſtraitly againſt himſelf, it is as beneficial as all actions, for by it all actions real and perſonal are releaſed. And by the releaſe of all quarrels, all cauſes of actions are releaſed thereby, albeit no action be then depending for the ſame. 40. E. 3. 47. b. Ed. Althams caſe ubi ſupra. 35. H. 8. Dier. 57. 9. E. 4. 44. 39. H. 6. 9.

¶ *Quarrels.* Controverſies and Debates are Synonima, and of one ſignification. Litis nomen omnem Actionem ſignificat, ſive in rem, ſive in perſonam ſit. If a man releaſe omnes loquelas, it is as large as omnes Actiones, for omnis Actio eſt loquela, and it extendeth as well to Actions in Courts of Record, as baſe Courts, for the Writ of Error ſaith, In Recordo & Proceſſu, &c. loquela quæ fuit inter, &c. and ſo the Writ of falſe Judgment ſaith, Recordari facias loquelam, where the Judgment was given in the County Court. Omnes exactiones ſeem to be large words, for Exactio derivatur ab exigendo, and Exigere ſignifieth to enquire or demand. Lib. 8. fol. 153. Althams caſe. 21. H. 6. 16. a. F. N. B. 23. 18. 50. Aſſ. 6. 40. E. 3. 22. 13. R. 2. Avowrie 89.

Sect. 512.

¶ ITem il home per ſon fait ſoit obligé a un auter en

ALſo if a man by his Deed be bound to another in a

¶ *Releaſe of Obligor to his Actions, &c.* The reaſon

of

of this caſe is. For that the debt is a thing conſiſting merely in action, and therefore albeit no action lyeth for the debt, becauſe it is debitum in præſenti, quamvis ſit ſolvendum in futuro, yet becauſe the right of action is in him, the releaſe of all actions is a diſcharge of the debt it ſelf.

11. E. 4. 41. 43.

(o) And ſo may an Executor before Probate releaſe an action, and yet before Probate he can have no action, becauſe the right of the action is in him, and ſo it was adjudged. And ſome ſay, that an Ordinary may releaſe an action, & yet he can have none. But if a man by Deed doth covenant to build an houſe or make an eſtate, and before the covenant broken, the Covenantee releaſeth to him all Actions, Suits, and Quarrels, this doth not diſcharge the covenant it ſelf, becauſe at the time of the Releaſe, nihil fuit debitum, there was no debt or duty, & cauſe of action in being. But in that caſe a Releaſe of all covenants is a good diſcharge of the covenant before it be broken,

(o) Trin. 2. Ja. in Com. Bacon, inter Middleton & Rinnot. 18. H. 6. 23. b. Pl. Com. 277. 278. In Grosbroke's caſe per Weſton.

5 Eliz. Dict. 217.

Althams caſe ubi ſupra.

certaine ſumme de money a payer al Feaſt de S. Michael prochein enſuant, ſi le obligée devant le dit Feaſt releſſa al Obligor touts Actions il ſerra barre del dutie a touts temps, & uncore il ne puiſſoit aver Action al temps de Releaſe fait.

certain ſumme of money, to pay at the Feaſt of Saint *Michael* next enſuing, if the Obligee before the ſaid Feaſt releaſe to the Obligor all Actions, he ſhall be barred of the duty for ever, and yet he could not have an Action at the time of the Releaſe made.

Sect. 513.

7. H. 7. 5. 2.

45. E. 3. 8. 17. H. 6. 26. 13. H. 4. Avowrie 240.

30. E. 3. 13. b. 47. E. 3. 24.

20. E. 2. Execution 137. 16. E. 2. ib. 138. 16. E. 3. Scire Fac. 4 F. N. B. 267. 9. E. 3. 7.

5. Mar. Action ſur le caſe. Br. 108. 3. Mar. Dier. 113. lib. 4. fol. 94. Blades caſe. l. 5. fo. 81. b. Fordes caſe.

39. H. 6. 28. b. 5 E. 4. 45. 2. H. 4. 13. 12. R. 2. Releaſe 29.

(*Releaſe touts Actions.* This releaſe ſhall not bar the leſſor of his Rent, becauſe it was neither debitum nor ſolvendum at the time of the releaſe made, for if the land be evicted from the leſſee before the Rent become due, the Rent is avoided, for it is to be paid out of the profits of the land, and it is a thing not merely in action, becauſe it may be granted over. But the leſſor before the day may acquit or releaſe the Rent. But if a man be bound in a Bond or by contract to another to pay a hundred pounds at ſive ſeveral days, he ſhall not have an action of Debt before the laſt day be paſt, and ſo note a diverſity between duties which touch the realty, and the meer perſonalty. But if a man be bound in a Recognizance to pay a hundred pound at ſive ſeveral days, preſently after the firſt day of payment he ſhall have execution upon the Recognizance for that ſum, and ſhall not tarry till the laſt be paſt, for that it is in the nature of ſeveral Judgments. And ſo note a diverſity between a debt due by Recognizance, and a debt due by Bond or Contract. And ſo it is of a Covenant or Promiſe, after the firſt default an action of Covenant, or an action upon the Caſe doth lie, for they are ſeveral in their nature. Laſtly, note a diverſity between Debts and Covenants, or Promiſes.

(*Mes ſi home leſſa terre a un auter pur terme dun an, rendant a luy al Feaſt de S. Michael prochein enſuant 40. s. & puis devant meſm le Feaſt il releſſa al leſſe touts act. unt. apres meſm l'feaſt il avera act de Det pur non payment de les 40. s. nient obſtant le dit releas.* Stude cauſâ diverſitatis enter les deux caſes.

But if a man letteth Land to another for a year, to yield to him at the Feaſt of S. *Mich.* next enſuing 40. s. & afterwards before the ſame Feaſt he releaſeth to the leſſee all actions, yet after the ſame Feaſt he ſhall have an action of debt for the non-payment of the 40 s. notwithſtanding the ſaid Releaſe. *Stude cauſam diverſitatis* between theſe two caſes.

If a man hath an Annuity for term of years, or for life, or in fee, and he before it be behind doth releaſe all actions, this ſhall not releaſe the Annuity, for it is not merely in action, becauſe it may be granted over.

Sect.

Sect. 514.

Item ou home voile ſuer briefe de Droit, il couient que il counta del ſeiſin de luy, ou de les anceſtors, & auxy q̄ l'ſeiſin fuit en temps de meſme le Roy come il counta en ſon count: Car ceſt un ancient ley uſe, come appiert per l'Report dun plee en le Eire de Nottingham, titulo Droit en Fitzherbert, cap. 26. en tiel ſome q̄ enſuiſt. John Barre port ſon briefe de Droit envers Reynold de Aſſington, et demaunda certaine tenements, &c. ou le miſe eſt joyne en le bank, et original et le Proces furent demandes devant Juſtices errāts, ou les parties viendront a les 12. Chivalers furent lour ſerement ſans challenge des parties deſtre alowes, pur ceo que election fuit fait per aſſent des parties, oue les quater Chivalers, & le ſerement fuit tiel, Que jeo verity dirr, &c. le quel R. de A. ad plus mere droit a tener les tenements que John Barre demanda vers luy per ſon briefe de Droit, ou John, de

ALſo where a man will ſue a Writ of Right, it behoveth that he counteth of the ſeiſin of himſelf or of his Anceſtors, and alſo that the ſeiſin was in the ſame Kings time, as he pleadeth in his plea. For this is an ancient Law uſed, as appeareth by the report of a plea in the Eire of *Nottingham*, *tit. droit in Fitzherbert*, *cap.* 26. in this form following. *John Barre* brought his Writ of Right againſt *Reynold* of *Aſſington*, and demanded certain Lands, &c. where the miſe is joined in bank, and the original and the Proceſs were ſent before the Juſtices errants, where the parties came, and the twelve Knights were ſworn without challenge of the parties, to be allowed, becauſe that choice was made by aſſent of the parties, with the four Knights, and the Oath was this; That I ſhall ſay the truth, &c. whether *R.* of *A.* hath more meer right to hold the tenements which *John Barre* demandeth againſt him by his Writ of Right, or *John* to have

¶ *IL covient que il counta del ſeiſin de luy ou de ſes anceſtors.* For if neither he nor any of his Anceſtors were ſeiſed of the land, &c. within the time of limitation, he cannot maintain a Writ of Right, for the ſeiſin of him of whom the Demandant himſelf purchaſed the land, &c. availeth not. For the time of limitation. See the Statute of 32. H 8. cap. 2. Vide Sect. 170.

And ſo it is in a Writ of Right of Advowſon. F.N.B. 30. a. 2. E. 3. 27. Littl. 112. a.

¶ *Auxy que le ſeiſin fuit en temps de meſme le roy come il counta.* Hereby it appeareth, that not only a ſeiſin (as hath been ſaid) is requiſite, but alſo that the ſeiſin be had in the time of the ſame king, according to his Count.

¶ *Report* cometh of the Latine word Reportare, à re, & porto, id eſt, referre, à re, & fero. And in the Common Law, it ſignifieth a publick relation, or a bringing again to memory Caſes judicially argued, debated, reſolved, or adjudged in any of the Kings Courts of Juſtice, together with ſuch cauſes and reaſons as were delivered by the Judges of the ſame, and in this ſenſe Littleton uſeth the word in this place.

¶ *En le Eire de Nottingham.* Eire, Iter. And it ſignifieth the Court of the Juſtices in Eire, and thereupon they were called Juſticiarii Itinerantes, in reſpect that the Juſtices reſiding at Weſt-

Weſtminſter were cal'ed Juſticiarii reſidentes, and were much like in this reſpect to the Juſtices of Aſſiſe at this day, although for authority and manner of proceeding (whereof you ſhall read (p) in the ancient Authors of the law) far different. And as the power of the Juſtices of Aſſiſes by many Acts of Parliament, and other Commiſſions increaſed, ſo theſe Juſtices Itinerant by little and little vaniſhed away. And it is certain, that the authority of Juſtices of Aſſiſes Itinerant through the whole Realm, and the Inſtitution of Juſtices of Peace in every County being duly performed, are the moſt excellent means for the preſervation of the Kings peace, and quiet of the Realm, of any other in the Chriſtian world.

(p) Mirror cap. 2 ſect. 3. & ſect. 15. & c 4. le office des Juſtices in Eire. Glanv l. 9 cap. 11. l. 8. cap. primo. Britton fol. 1. b 7. 8. &c. Bract. lib. 3. fo. 115. &c. Flet. l. 1. c. 15 &c. 4. E 3 32. 6. F. 3. 35. 2. E. 3 21. 15 H 7. 5. Vid. Sect. 442. 233. 234.

¶ *De Nottingham.* This ſhould be Northampton according to the Original.

This report whereof Littleton here maketh mention, you ſhall find an Abſtract of it in 3. E. 3. ſince Littletons time, put in print by Fitzherbert when he was Serjeant in 11. H. 8. and is not in the Reports or Books at large. And yet here it appeareth, that they be of great authority, and vouched by Littleton himſelf for the proof of a main point in Law. And hereby it alſo appeareth how neceſſary it is to read Records and Pleas reported or recorded, though they were never printed. For theſe and the like Records are Veritatis & Vetuſtatis veſtigia.

3. E. 3. Tit. Droit. F. 26.

¶ *Tit. droit, in* Fitzherbert 26. is

aber eux, ſicome il demaund, & pur rien dirra que le verity ne dirra, ſicome moy ayde Dieu, &c. ſans dire a lour eſcient. Et tiel ſerement ſerra fait en attaint, et en Battaile, & en ley gager, car eux mittont cheſcun thoſe a fine. Mes John Barre counta ol ſeiſin dun Raſe ſon anceſter, en temps le Roy Henry, et Reynolde ſur le miſe joyne tendiſt demy mark pur le temps &c. Et ſur ceo Herle Juſtice dit al grand aſſiſe, apres ceo que ils fueront charges ſur le mere Droit, Sous gentes, Reynold donaſt demy mark al Roy pur le temps, al entent que ſi vous troves q̄ launceſter John ne fuit pas ſeiſie en le temps que le demaundant ad count, vous nenquires plus avant del droit, et p̄ ceo vous nous dires, l' quel launceſter John, Raſe per noſme, fuit ſeiſie en temps le Roy Henry, come il ad count, ou non. Et ſi vous troves que il ne fuit ſeiſie en cel temps, vous nenquires nient pluis, & ſi vous troves que il fuit ſeiſie, donques enquires ouſter del briefe. Et puis le

them as he demandeth, and for nothing to let to ſay the truth, ſo help me God, &c. without ſaying to their knowledge. And the like oath ſhall be made in an Attaint, and in battel, and in wager of Law, for theſe do bring every thing to an end. But *John Barre* counted of the ſeiſin of one *Ralfe* his Anceſtor in the time of K. *Henry*, and *Reynold* upon the miſe joined tendred half a mark for the time, &c. And hereupon *Herle* Juſtice ſaid to the grād aſſiſe after that they were charged upon the meer right, You good men, *Reynold* gave half a Mark to the King for the time, to the intent that if you find that the anceſtor of *John* was not ſeiſed in the time that the demādant hath pleaded, you ſhall enquire no further upon the right, and for this, you ſhall tell us whether the anceſtor of *John*, (*Ralfe* by name) were ſeiſed in K. *Henries* time as he hath pleaded, or not. And if you find that he was not ſeiſed in this time, you ſhall enquire no more, and if you find that he was ſeiſed, then you ſhall enquire further of the writ. And after the grand Aſſiſe came in with their

graund

graund Aſſiſe rebien-dꝛoit oue lour verdict, & diſont que Rake ne fuit pas ſeiſie ẽ temps le Roy H. per que fuit agard, que Reynold tiendꝛoit les tenements vers luy demandes, a luy & ſes heires quites de John Barre & ſes heires a remnant. Et John en le mercie, &c. Et le cauſe pur que ieo aye monſtre icy a toy mon fits ceſt plee, eſt pur pꝛober le matter pꝛecedent que eſt dit en briefe de Dꝛoit, &c. car il ſemble per ceſt plee, que ſi Reynold navoit pas tendue dmi marke pur enquirer dl temps, &c. donques le graund Aſſiſe duiſſoit eſtre charge tantſolement dl mere dꝛoit, & nemy del poſſeſſion, &c. Et iſſint a touts foits en briefe de Dꝛoit, ſi le poſſeſſion dont le demandant counta ſoit en temps le Roy, com il avoit conſt, donques le charge del grande aſſiſe ſerra tantſolement ſur le mere dꝛoit, coment que le poſſeſſion fuit encounter le ley, come il eſt dit adebant en ceſt Chapter, &c.

verdict, and ſaid, that *Ralfe* was not ſeiſed in the time of King *Henry*, whereby it was awarded that *Reynold* ſhould hold the tenements demanded againſt him, to him and his heirs quite of *John Barre* and his heirs to the remnant. And *John* in mercy, &c. And the reaſon why I have ſhewed to thee my Son this Plea, is, to prove the matter precedent which is ſaid in a Writ of right, for it ſeemeth by this Plea, that if *Reynold* had not rendred the half mark to enquire of the time, &c. then the grand Aſſiſe ought to be charged only to enquire of the meer right, and not of the poſſeſſion, &c. And ſo always in a Writ of Right, if the poſſeſſion whereof the demandant counteth be in the Kings time, as he hath pleaded, then the charge of the grand Aſſiſe ſhall be only upon the meer right, although that the poſſeſſion were againſt the Law, as it is ſaid before in this Chapter, &c.

of a new addition, and therefore though it be true, yet not to be allowed.

¶ *Et le original & le proces fuer' demande devant Juſtices Itinerants.* 4 E. 3. 41. Mirror. Glanvil. Bracton. Britton. Fleta. } Peverals caſe, ubi ſupra.

For it is to be underſtood, that all Pleas either in the realty or perſonalty that were begun and not determined before Juſtices in Eire, were adjourned by them into the Court of Common Pleas.

¶ *Les* 12. *chivalers fieront lour ſerement ſauns challenge, &c. pur ceo que le election fuit fait per aſſent des parties ove les* 4. *chivalers.*

Here are four things to be obſerved. 30 E. 1. tit. challenge 172. 21 E. 4. 77. 39. E. 3. 1. 44 E. 3. 6. 11. H. 6. 13.

First, That omnis conſenſus tollit errorem, and againſt his own conſent he cannot challenge the twelve.

Secondly, That the four Knights Electors of the grand Aſſiſe are not to be challenged, for that in Law they be Judges to that purpoſe, and Judges or Juſtices cannot be challenged. And this is the reaſon that Noblemen that in caſe of high Treaſon are to paſs upon a Peer of the Realm cannot be challenged, becauſe they are Judges of the fact, and the Magna Charta ſaith, per judicium pariſ. 4 E. 3. 13. Magna Charta cap. 29. um ſuorum.

Thirdly, That the twelve before any aſſent 39 E. 3. 2. 7 H. 4. 20.

may be challenged before the four Knights Electors, but after aſſent or return of the pannel before the Juſtices, there ſhall be no challenge to the pannel nor to the poles.

Fourthly, If there be not four Knights for Electors in that County, the next to them in that County ſhall be taken. 7. H. 4. 20. Ne curia Regis deficeret in juſtitia exhibenda.

¶ *Sauns dire a lour eſcient.* And here it appeareth, that where the judgment is final, there the Oath of the grand Aſſiſe or Jury is abſolute, and not to their knowledge, as here

here in the Writ of Right, in the Attaint, and in wager of Law, for the Judgment in every of theſe three is final.

Vid. Sect. 193.

¶ *Le miſe eſt joyne.* Miſe is a word of art appropriated only to a Writ of Right, ſo called becauſe both parties have put themſelves upon the meer right to be tryed by grand Aſſiſe or by Battail: ſo as that which in all other actions is called an Iſſue, in a Writ of Right in that caſe is called a Miſe. And in this ſenſe Littleton taketh it here. But in a Writ of Right if a Collateral point is to be tryed, there it is called an Iſſue: and is derived of this word

Regiſtrum.

33. H. 8. ca. 13. 3 E. 6. ca. 36.

(Miſum) becauſe the whole cauſe is put upon this point. It is alſo taken for expences, as Miſæ & Cuſtagia. And ſometime it ſignifieth a cuſtomary grant to the King or Lords Marchers of Wales by their Tenants at their firſt coming to their Lands.

10. E. 3. 20. 31 E. 3. droit 11. 22. E. 3. 17. 18. H. 3. droit 62. 33. E. 3. ib. 39. Lamb. explicat. verborum verbo Mancuſa.

¶ *Tender di marke al Roy.* Maſter Lambard ſaith, that Mancuſa & Marca Saxonice Mancup. 7. Mearc' Nummus 30. valens denarios. And this Meare now called a Mark, being an old Saxon word, is the cauſe that England moſt commonly reckoned by Marks, Libra Saxonice is a pund, à pondo, which is called ſo until this day. Solidus qui apud nos eſt pars libræ viceſima, denarios per id temporis continebat quinque, nunc duodecim, and Scilling is a Saxon word, and with us uſed to this day. Penny Saxonice pennig, Latine Denarius, but the value of theſe have not been always one.

F. N. B. 31. c. 31. E. 3. droit. 15. 6. E. 3. ibid. 24.

In a Writ of Right of Advowſon brought by the King, the Tenant ſhall not tender the Di. mark, becauſe Nullum tempus occurrit Regi, and therefore the King ſhall alledge, that he or his Progenitor was ſeiſed without ſhewing any time.

Mirror. c. 1. ſect. 17. c. 3. de Attaint. ca. 5. ſect. 1. Bract. fo. 288. 289. &c. 292. Brit. fol. 241. 245. 246. &c. Flet. li. 5. ca. 21. & 34. Forteſcue ca. 26.

¶ *En Attaint.* Attincta, is a Writ that lieth where a falſe Verdict in Court of Record upon an Iſſue joyned by the parties is given. And of ancient Writers it is called Breve de convictione. And is derived of the participle Tinctus, or Attinctus, for that if the petty Jury be attainted of a falſe Oath, they are ſtained with perjury, and become infamous for ever, for the Judgment at the Common Law in the Attaint importeth eight great and grievous puniſhments. 1. Quod amittat liberam legem imperpetuum, that is, he ſhall be ſo infamous as ſhall never be received to be a Witneſs, or of any Jury. 2. Quod forisfaciant omnia bona & catalla ſua. 3. Quod terræ & tenementa in manus Domini Regis capiantur. 5. Quod uxores & liberi extra domus ſuas ejicerentur. 5. Quod domus ſuæ proſtentur. 6. Quod arbores ſuæ extirpentur. 7. Quod prata ſua arentur, Et 8. Quod corpora ſua carceri mancipentur. So odious is perjury in this caſe in the eye of the Common Law, and the ſeverity of this puniſhment is to this end, Ut pœna ad paucos, metus ad omnes perveniat, for there is Miſericordia puniens, and there is Crudelitas parcens: And ſeeing all tryals of real, perſonal, and mixt actions depend upon the Oath of 12 men, prudent Antiquity inflicted a ſtrange and ſevere puniſhment upon them, if they were attainted of perjury.

But ſince Littleton wrote, a Statute hath been made in mitigation of the ſeverity of the Common Law, in caſe when the petite Jury is attainted, and therefore it is taken by equity. For where the Statute ſaith, that the party grieved ſhall have an Attaint againſt the party which ſhall have Judgment upon the Verdict, yet an Attaint ſhall be maintained upon that Statute againſt the Executors of the party, Et ſic de ſimilibus. (a) But ſee the Statute and Authorities quoted in the Margent. Only I thought good to obſerve three things.

(a) 23. H. 8. ca. 3. 3. Eliz. Dyer. 201. 7. E. 6. ibidem 81. 3. Mar. ibidem 129. 7. Eliz. ibidem 235. 24. H. 8. Br. Attaint. 96. 4. Mar. ib. 127. 20. H. 7. 5. 42. E. 3. 26. F. N. B. 107. D.

First, that no Attaint can be maintained upon this Statute but between party and party.

Secondly, that no Conuſance can be granted upon any Attaint, becauſe all Attaints are to be taken either before the King in his bench, or before the Juſtices of the Common place, and in no other Courts, &c.

Thirdly, conſider what Pleas may be pleaded in an Attaint by force of this Act, and what not.

Mirror ca. 1. ſect. 3. ca. 3. ſect. ca. 5. ſect. 1. Bracton lib. 3. 141. b. & fo. 320. 331 Glanvil. lib. 2. cap. 3, 4, 5. Lib. 8. ca. 9. Lib. 4. ca. 1. Brit. fo. 40. 42. 43. 81. 175. 190. Fleta lib. 1. ca. 32. & lib. 2. cap. 48. (b) 4. E. 3. 41. 17. E. 3. 19. H. 6. 35. 1. H. 4. 3. 30. E. 3. 20. 29. E. 3. 12. 13. H. 4. 4. Stan. 174. 178. 17. Eli. Dyer. 9. E. 4. 35. 1. H. 6. 6. 3. H. 6. 55.

¶ *En Battaile.* Duellum, Monomachia, and it ſignifieth in the Common Law a tryal by ſingle fight, by battail or combate, Monomachia. (b) In in the Writ of Right neither the Tenant or Demandant ſhall fight for themſelves, but find a Champion to fight for them: becauſe if either the Demandant or Tenant ſhould be ſlain, no Judgment could be given for the Lands or Tenements in queſtion. But in an Appeal the Defendant ſhall fight for himſelf, and ſo ſhall the Plaintiff alſo, for there if the Defendant be ſlain, the Plaintiff hath the effect of his Suit, that is, the death of the Defendant; the order and ſolemnity whereof you may read in our ancient and latter Books. And this the Law did inſtitute when the Tenant failed of his Witneſſes, or Evidences, or other proofs, and the preſumption of Law is, that God will give victory to him that hath right.

Vid. l. 9 fo. 32. b. & 33 b. Mirror ca. 4. Del office des Juſtices, &c. Glanvil. lib. 1. cap. 9. lib. 8. cap. 8.

¶ *Le gager.* Vadiare Legem, and there is alſo Facere Legem, by making of his Law: That is to take an oath (for example) that he oweth not the debt demanded of him upon a ſimple Contract, nor any penny thereof. And it is called Wager of Law, becauſe of ancient time

time he put in ſurety to make his Law at ſuch a day, and it is called making of his Law, becauſe the Law doth give ſuch a ſpecial benefit to the Defendant to bar the Plaintiff for ever in that caſe. (r) But he ought to bring with him eleven perſons of his neighbours that will avow upon their oath, that in their conſciences he ſaith truth, ſo as he himſelf muſt be ſworn De fidelitate, and the eleven De credulitate. Lib.10.c.5. Br.l.3.tract.2.c.37.& l.5.f.410. Britton f.56. Fleta l.2.c.56.63. (r) Magna Carta c.28. Bract.l.3.f.120. Fleta l.....c.63. Diverſities des Courts. 33.H.6.8.

And Wager of Law lieth not when there is a ſpecialty, or Deed to charge the Defendant, but when it groweth by word, ſo as he may pay or ſatiſfie the party in ſecret, whereof the Defendant having no teſtimony of Witneſſes may wage his Law, and thereby the Plaintiff is perpetually barred, as Littleton here ſaith, for the Law preſumeth that no man will forſwear himſelf for any worldly thing; but mens conſciences do grow ſo large (eſpecially in this caſe paſſing with impunity) as they chuſe rather to bring an Action upon the caſe upon his promiſe, wherein (becauſe it is Treſpaſſe ſur le caſe) he cannot wage his Law, then an Action of debt.

A man Outlawed or attainted in an Attaint, or upon an Inditement of conſpiracy, or of perjury, or otherwiſe, whereby he become infamous, ſhall not wage his Law. 33.H.6 35.

A man under the age of 21 years ſhall not wage his Law, but a Feme covert together with her husband ſhall wage her Law. 11.H.6.40. 15.E.4.2.

When the Suit is for the King, or for his benefit, as in a Quo minus, the Defendant ſhall not wage his Law. 32.H.6.24. 8.H.5.Ley 66. 35.H.8.Ley Br.103.

If an Infant be Plaintiff, the Defendant ſhall not wage his Law. An Alien ſhall wage his Law in that language he can ſpeak. 26.E.3.63.b. 21.H 6.42.

In no caſe where a contempt, treſpaſs, deceit, or injury is ſuppoſed in the Defendant, he ſhall wage his Law, becauſe the Law will not truſt him with an oath to diſcharge himſelf in thoſe caſes, only in ſome caſes in Debt, Detinue, Accompt, the Defendant is allowed by Law to wage his Law. 44.E.3.32. 18.E.3.4. 24.E.3.39.

In an action of Account againſt a Receivor upon a receipt of money by the hand of another perſon for account render (unleſs it be by the hands of his wife, or of his Commoigne) the Defendant ſhall not wage his Law, becauſe the receipt is the ground of the Action which lyeth not in priviti between the Plaintiff and the Defendant, but in the notice of a third perſon, and ſuch a receipt is traverſable. (d) But in an Action of debt upon an Arbitrament, or in an action of Detinue by the bailment of anothers hand, the Defendant ſhall wage his Law, becauſe the Debet and the Detinet is the ground of thoſe actions, and the Contract or Bailment though it be by another hand, is but the conveyance, and not traverſable. In an action of Account againſt a Bailiff of a Mannor, the Defendant cannot wage his Law, becauſe it foundeth in the realty. In an action of Debt which concerns the realty, as for Debt for a Rent upon a Leaſe for years, or an action of Detinue for detaining an Indenture of a Leaſe for years, the Defendant ſhall not wage his Law, much leſs for Charters or Deeds which concern inheritance. 15.E.4.16. 10.E.4.5. (d) 33.H.6.24. 13.H.7. 3.a.22.H.6.41.1.H.6. 1.b.8 H 6.11.18.H.8.3. 3.E.3.28. 11.H.4.54. 5.H 5.13. 21.H.6.30. 24.E.3.Ley 63. 30.E.3. 19. 9.E.4.1. 34.H.8.Ley Gager.Br. 97.

In an action of Debt for a Fine or Amerciament in a Leete, the Defendant ſhall not wage his law, becauſe the Leete is a Court of Record, but in an action of Debt for an Amerciament in a Court Baron the Defendant ſhall wage his law, for that it is no Court of Record. 10.H.6.7. 1.H.7.25. 6.El.Bendloes.

In Debt upon an account before Auditors, the Defendant ſhall not wage his law, and this by conſtruction of the Statute of W. 2. cap. 11. which giveth them great authority, and ſaith, Coram Auditoribus, and therefore of an account before one Auditor the Law lyeth. So if the Lord before Auditors be found in ſurpluſage; in an action of Debt brought by the Accomptant, the Lord ſhall not wage his law by conſtruction alſo upon this Statute, as an incident riſing upon the Account. 9.H.5.3. 8.H.6.15. 22.H.6.35. 38.H.6.6. 14.H.6.62. 38.H.6.6.

In an action of Debt by a Gaoler againſt the Priſoner for his victuals, the Defendant ſhall not wage his law, for he cannot refuſe the Priſoner, and ought not to ſuffer him to die for default of ſuſtenance, otherwiſe it is for tabling of a man at large. 28.H.6.4. 19.H.6.20. 22.H.6.13. 39.H.6.18.

In an action of Debt brought by an Attorney for his Fees the Defendant ſhall not wage his law, becauſe he is compellable to be his Attorney. And ſo if a ſervant be retained according to the Statute of Labourers in an action of Debt for his Salary, his maſter ſhall not wage his law, becauſe he was compellable to ſerve, otherwiſe it is, if he be not retained according to the Statute. 21.H.6.4. 38.H.6.22. 39.H.6.18.

Whereſoever a man is charged as Executor or Adminiſtrator, he ſhall not wage his law, for no man ſhall wage his law of another mans Deed, but in caſe of a Succeſſor of an Abbot, for that the houſe never dieth. 5.H.6.38. 1.H.7.25. 13.H.7.

In Debt upon a penalty given by Statute, the Defendant ſhall not wage his law. There is another kind of wager of law in a real action, of Non ſummons, but thereof Littleton ſpeaketh not. 10.H.7.18.

¶ *Et ſur ceo* Herle *Juſtice dit, &c.* Hereby it appeareth, that it is the office

of the Judges to inſtruct the grand Aſſiſe or Jury in points of Law, for as the grand Aſſiſe or other Jurors are triers of the matters of fact. Ad quæſtionem facti non reſpondent Judices, ſo Ad quæſtionem juris non reſpondent Juratores. And accordingly the Judge in this caſe directed the grand Aſſiſe, viz. if they found that, &c.

Glanv. l. 12. cap. 1. &c. Bracton li. 5. fol. 328.

¶ *Per que ſuit agard.* Here are two things to be obſerved. Firſt, the form of a Judgment final. Secondly, that a Judgment final is to be given in this particular caſe. For the form of the final Judgment for the Tenant is here expreſſed, that the Tenant ſhall hold the Tenements demanded againſt him, to him and his heirs quite of the Demandant and his heirs for ever, and the Demandant in the mercy. Quod tenens teneat terram illam ſibi & hæredibus ſuis in pace verſus petentem, & hæredes ſuos in perpetuum.

Lib. 5. fol. 85. Penrins Caſe.

34. E. 3. Judgm. 256. ad-judge accord. 13. H. 4. Judgm. 245. 10. H. 6. 8. 20. H. 6. 38. b. 21. H. 6. 34. b. 26. H. 8. 8. b. 1. Mar. Dy. 98. li. 5. fo. 85 Penrins caſe. F. N. B. 5. 11. 31.

For the ſecond point ſeeing the Miſe is joyned upon the meer right, albeit the Verdict of the grand Aſſiſe be given upon another point, yet Judgment final ſhall be given. And ſo it is if the Tenant after the Miſe joyned make default, or confeſs the action, or if the Demandant be Non-ſuit, and yet in none of theſe caſes they of the grand Aſſiſe gave their Verdict upon the meer right.

¶ *Come eſt avant dit.* Vid. Sect. 478.

Chap. 9. Of Confirmation. *Sect.* 515.

Bract. li. 2. fol. 32. b. & 58. 59. Brit. 235.

¶ HEre firſt our Author ſhews what a Confirmation is:

Confirmation. Confirmatio cometh of the verb * Confirmare, quod eſt firmum facere, and therefore it is ſaid, That Confirmatio omnes ſupplet defectus, licet id quod actum eſt ab initio, non valuit. A Confirmation is a conveyance of an eſtate or right in eſſe, whereby a voidable eſtate is made ſure and unavoidable, or whereby a particular eſtate is encreaſed.

* Lit. pag. ſequent.

Bract. li. 2. 58.

Bract. li. 2. fol. 27. 58. 38. H. 6. 34. 37. Pl. Com. Count de Leiceſters caſe.

¶ Confirmation doth not ſtrengthen a void eſtate. Confirmatio eſt nulla ubi donum præcedens eſt invalidum, & ubi donatio nulla omnino nec valebit confirmatio: for a Confirmation may make a voidable or defeaſible eſtate good, but it cannot work upon an eſtate that is void in Law. Non valet confirmatio niſi ille qui confirmat ſit in poſſeſſione rei, vel juris unde fieri debet confirmatio, & eodem modo niſi ille cui confirmatio fit, ſit in poſſeſſione. And another ſaith, (c) Confirmare eſt id quod prius infirmum fuit firmare. Et donationum alia incepta, & defectiva, & poſt tempus confirmata, confirmatio enim omnem ſupplet defectum, poterit enim eſſe in pendenti donec per ratihabitionem hæredis cum ad ætatem pervenerit roboretur.

10. E. 2. Confirm. 24. 32. E. 3. 9. (c) Fleta lib. 3. cap. 14. & lib. 3. cap. 3.

¶ *Fait de Confirmation & continuement en tiel forme, ou a tiel effect,* Noverint univerſi, &c. me A. de B. ratificaſſe, approbaſſe, & confirmaſſe C. de D. ſtatum & poſſeſſionem, quos habeo, de, & in uno meſſuagio, &c. cum pertin' in F. &c.

A Deed of Confirmation is commonly in this form, or to this effect: *Know all men, &c. That I A. of B. have ratified, approved, and confirmed to C. of D. the eſtate and poſſeſſion which I have, of, and in one Meſſuage, &c. with the Appurtenances in F. &c.*

44. Aſſ. 3.

¶ Ratificaſſe. Ratificare eſt ratum facere, and is æquipollent to Confirmare, which as hath been ſaid, is firmum facere.

¶ Approbaſſe cometh of Ad and Probo, which is to make perfect and good.

¶ Confirmaſſe. Here is to be obſerved, That there be two kinds of Confirmations, viz. Confirmations expreſs or in Deed, whereof Littleton hath here put theſe three examples, and Confirmations implied, or in Law, whereof Littleton hereafter ſpeaketh in this Chapter. Quælibet confirmatio, aut eſt perficiens, creſcens, aut diminuens, and of all theſe Littleton putteth examples in this Chapter. And hereof Fleta ſaith, Carta autem de confirmatione eſt illa quæ alterius factum conſolidat & confirmat, & nihil novi attribuit, quandoque tamen confirmat & addit,

Li. 9. fo. 142. Beamonds caſe. Flet. li. 3. cap. 14.

Sect.

Sect. 516.

¶ ET en actū cafe un fait de Confirmation eſt bone et available, lou en tiel caſe un fait de Releaſe neſt paſſe bone, ne available. Sicõe jeo leſſa Terre a un home pur terme de ſa vie, l'quel leſſa meſm̃ la terre a un auter p̃ terme de xl. ans, per force de quel il eſt en poſſeſſion. Si jeo p mon fait confirme leſtate del Tenant a terme dans, et puis le tenant a terme de vie morust durant le terme des ans, jeo ne puis enter en la Terre durant le dit terme.

AND in ſome caſe a Deed of Confirmation is good and available, where in the ſame caſe a Deed of Releaſe is not good nor available. As if I let land to a man for term of his life, who letteth the ſame to another for term of forty years, by force of which he is in poſſeſſion: if I by my Deed confirm the Eſtate of the Tenant for years, and after the Tenant for life dieth during the term of years, I cannot enter into the Land during the ſaid term.

¶ Littleton in this chapter putteth eight diverſities between a Confirmation and a Releaſe, and thereof for illuſtration here he putteth two caſes in this and the next Section, which upon that which hath been ſaid in the precedent Chapters, is ſufficiently explained. Only in both theſe caſes this is to be obſerved, That where a Confirmation ſhall enlarge an eſtate, there privity is required, as well as in the caſe of the Releaſe, as by many examples which Littleton puts in this Chapter appeareth. And note, here is the firſt caſe wherein a Releaſe and a Confirmation do differ. 49.E.3.32. 9.H.6.22. Tit. Releaſe 44.

Leſſee for life made a leaſe for thirty years, and after the Leſſor and Leſſee for life made a Leaſe for ſixty years to another, which Leaſe for ſixty years the leſſor did firſt confirm, and after the leſſor confirmed the leaſe for thirty years, and after Tenant for life dyed within the thirty years, and it was adjudged, (d) That the leaſe for thirty years was determined by the death of leſſee for life, and that the leſſee for ſixty years might enter, for that albeit the leaſe for ſixty years was the latter in time, yet was it of greater force in law, for that the leſſor who had power to confirm which of them he would, did firſt confirm the ſecond leaſe. (d) Inter Unwel & Lodge, temp. Reg. Eliz.

In this Chapter is alſo to be obſerved eight Caſes, wherein a Releaſe and a Confirmation bide the like operation in Law.

Sect. 517.

¶ UMore ſi jeo per mon fait de Releaſe aboy releas al tenant a terme dans en la vie le tenant a terme de vie, cel Releaſe ſerra voyd, pur ceo que avonqs ne fuit aſcun privity perenk moy et le tenant a terme dans, car releaſe neſt availeable al tenant a terme dans, mes lou eſt un privitie perenk luy & celuy q releaſaſt.

YEt if I by my Deed of Releaſe had releaſed to the tenant for years in the life time of the tenant for life, this Releaſe ſhall be void, for that then there was not any privity between me & the Tenant for years: for a Releaſe is not available to the Tenant for years, but where there is a privity between him and him that releaſeth.

This belongeth to the firſt diverſity between a Releaſe and a Confirmation.

Sect.

Sect. 518.

¶ Here is the ſecond diverſity between a Releaſe and a Confirmation. But if the Diſſeiſor make a Leaſe for years to begin at Michaelmas, and the Diſſeiſee confirm his eſtate, this is void, becauſe he hath but intereſſe termini, and no eſtate in him, whereupon a Confirmation may enure.

4.H.7.10 by Read. 22, E.4.36.

¶ En meſme le mãner eſt, ſi jeo ſoy diſſeiſie, et le Diſſeiſor fait un Leaſe a un auter pur terme dans, ſi jeo releſſa al termor, ceo eſt voyde, mes ſi jeo confirma leſtat le termor, ceo eſt bone & effectual.

IN the ſame manner it is if I be diſſeiſed, and the Diſſeiſor make a Leaſe to another for term of years, if I releaſe to the Termor, this is void: but if I confirm the Eſtate of the Termor, this is good and effectual.

Sect. 519.

¶ Item ſi jeo ſoy diſſeiſie, et jeo confirma leſtate le Diſſeiſor, il ad bone & droiturel eſtate en Fee ſimple, comẽt que en le fait de confirmation nul mention eſt fait de ſes heires, pur ceo que il avoit Fee ſimple al temps de Confirmation. Car en tiel caſe ſi l' diſſeiſee confirma leſtate le diſſeiſor, A aver et tener a luy et a ſes heires de ſon corps engendres, ou a aver et tener a luy pur le terme de ſa vie, uncore le diſſeiſor ad fee ſimple, et eſt ſeiſie en ſon demeſne come de fee, pur ẽ que quant ſon eſtate fuit confirm, donque il avoit fee ſimple, et tiel fait ne poit changer ſon eſtate, ſans entry fait ſur luy, &c.

ALſo if I be diſſeiſed, and I confirm the eſtate of the Diſſeiſor, he hath a good and rightful eſtate in Fee ſimple, albeit in the Deed of Confirmation no mention be made of his heirs, becauſe he had Fee ſimple at the time of the Confirmation. For in ſuch caſe if the Diſſeiſee confirm the ſtate of the Diſſeiſor, To have and to hold to him and his heirs of his body engendred, or to have and to hold to him for term of his life, yet the Diſſeiſor hath a Fee ſimple, and is ſeiſed in his Demeſne as of Fee, becauſe when his eſtate was confirmed, he had then a Fee ſimple, and ſuch Deed cannot change his eſtate, without entry made upon him, &c.

19.H.6.22.6 E.3. Confirm. 4.

¶ Here is the firſt caſe wherein the Releaſe and Confirmation doth agree, viz. a Confirmation to a Diſſeiſor in Tail, or for any particular eſtate, is of the like force as a Releaſe to a Diſſeiſor, during ſuch eſtate, which in both caſes is good for ever. In the ſame manner it is, if the Diſſeiſor make a gift in Tail, and the Diſſeiſee confirm the eſtate of the donee for the life of the donee, this Confirmation enures to the whole eſtate tail, for a Confirmation can make no fraction of any eſtate, to extend but to part of the eſtate only: & ſic de cæteris.

Sect.

Sect. 520.

EN meſme le maner eſt, ſi ſon eſtate ſoit confirme pur terme de un jour ou pur terme dun heure, il ad bon eſtate en fee ſimple, pur ceo que ſon eſtate en fee ſimple fuit un foits confirm'd. Quia confirmare, idem eſt, quod firmum facere, &c.

IN the ſame manner it is if his eſtate be confirmed for term of a day, or for term of an hour, he hath a good eſtate in fee ſimple, for this, that his eſtate in fee ſimple was once confirmed. *Quia confirmare, idem eſt, quod firmum facere, &c.*

HEre is the ſecond caſe wherein the releaſe and confirmation do agree. The reaſon of this is for that the Diſſeiſor hath a Fee ſimple, and therefore if his eſtate be confirmed but for an hour, it is good for ever, becauſe (ſaith Littleton) Confirmare, idem eſt, quod firmum facere.

Nota, a diverſity between a bare aſſent without any right or intereſt, & an aſſent coupled with a right or intereſt; and therefore an attornment cannot be made for a time nor upon Condition; Lib. 5. f 81. Fordes caſe.

but if the perſon make a leaſe for a hundred years, the Patron and the Ordinary may confirm fifty of the years, for they have an intereſt, and may charge in time of vacation. And ſo if a Diſſeiſor make a leaſe for an hundred years, the Diſſeiſee may confirm parcel of thoſe years, but then it muſt be by apt words, for he muſt not confirm the leaſe, or demiſe, or the eſtate of the leſſee, for then the addition for parcel of the term ſhould be repugnant when the whole was confirmed before, but the confirmation muſt be of the land for part of the term. So may the confirmation be of part of the land, as if it be of forty acres, he may confirm twenty, &c. So if Tenant for life make a leaſe for a hundred years, the leſſor may confirm either for part of the term, or for part of the land. But an eſtate of Free-hold cannot be confirmed for part of the eſtate, for that the eſtate is entire, and not ſeveral as years be.

Sect. 521.

Item ſi mon Diſſeiſor fait un leas a terme de vie, le remainder ouſter en fee, ſi jeo releas al tenant a terme de vie ceo urera a celuy en le remainder. Mes ſi jeo confirm leſtate de le tenant a terme de vie, uncore apres ſon deceaſe jeo puis bien enter, pur ceo que riens eſt confirme forſque leſtate le tenant a terme de vie, iſſint que apres ſon deceaſe, jeo puis enter. Mes quant jeo releſſa

ALſo if my Diſſeiſor maketh a Leaſe for life, the remainder over in fee, if I releaſe to the Tenant for life, this ſhall enure to him in the remainder. But if I confirm the Eſtate of the Tenant for term of life, yet after his deceaſe I may well enter, becauſe nothing is confirmed but the Eſtate of the Tenant for life, ſo that after his de-

HEre is the third Caſe wherein the Releaſe and Confirmation differ, for the Confirmation to the Tenant for life doth not enure to him in the remainder.

And ſo it is when the ſeveral eſtates be in one perſon, as if the Diſſeiſor make a gift in tail the remainder to the right heirs of Tenant in tail, if the Diſſeiſee confirm the eſtate in tail, it ſhall not extend to the Fee ſimple, no more than if the Diſſeiſor had made a gift in tail, the remainder for life, the remainder to the right heirs of tenant in tail, this extendeth only to the eſtate tail, and not

to the remainder for life, nor to the remainder in fee. But if the Diſſeiſor make a leaſe for life to A. and B. and the Diſſeiſee confirm the eſtate of A. B. ſhall take advantage thereof, for the eſtate of A. which was confirmed was joint with B. and in that caſe the Diſſeiſee ſhall not enter into the Land, and deveſt the moity of B.

If the Diſſeiſor infeoffe A. and B. and the heirs of B. if the Diſſeiſee confirm the eſtate of B. for his life, this ſhall not only extend to his companion, as hath been ſaid, but to his whole fee ſimple, becauſe to many purpoſes he hav the whole fee ſimple in him, and the confirmation ſhall be taken moſt ſtrong againſt him that made it.

Tenant in tail diſcontinueth in fee and dyeth, the Diſcontinuee make a leaſe for life, and granteth the reverſion to the iſſue, he ſhall not have a Formedon againſt Tenant for life, for by his Formedon he muſt recover eſtate of Inheritance, and the Leſſee for life hath not the Inheritance, but the iſſue in tail himſelf hath it.

tout mon droit al tenant a terme de vie, ceo urera a celuy en le remainder, ou en l'reverſion, pur ceo que tout mon droit eſt ale per tiel releas. Mes en ceſt cas, ſi le diſſeiſee confirme leſtate & le title celuy en le remainder ſans aſcun confirmation fait a tenant a terme de vie, le diſſeiſee ne poit enter ſur le tenant a term de vie, pur ceo que l'remainder eſt dependant ſur leſtate le tenant a terme de vie, & ſi ſon eſtate ſerroit defeate, le remainder ſerroit defeate, per lentrie le diſſeiſee, & ceo ne ſerra reaſon que il per ſon entre defeatezoit le remainder encounter ſon confirmation, &c.

ceaſe I may enter. But when I releaſe all my right to the tenant for life, this ſhall enure to him in the remainder or in the reverſion, becauſe all my right is gone by ſuch releaſe. But in this caſe if the Diſſeiſee confirm the eſtate and title of him in the remainder without any confirmation made to Tenant for life, the Diſſeiſee cannot enter upon the Tenant for term of life, for that the remainder is depending upon the ſtate for life, and if his eſtate ſhould be defeated, the remainder ſhould be defeated by the entry of the Diſſeiſee, & it is no reaſon that he by his entry ſhould defeat the remainder againſt his confirmation, &c.

If feoffee upon condition make a leaſe for life, or a gift in tail, and the feoffor releaſe the Condition to the feoffee, he ſhall not enter upon the Leſſee or Donee, becauſe he cannot regain his ancient eſtate.

If the Feoffee upon condition make a leaſe for life, the remainder in fee, if the Feoffor releaſe the condition to the leſſee for life, it ſhall enure to him in the remainder, as well as in the caſe of a Right, or of a Rent, &c.

If a Feme Diſſeiſoreſs make a feoffment in fee to the uſe of A. for life, and after to the uſe of her ſelf in tail, and the remainder to the uſe of B. in fee, and then taketh husband the Diſſeiſee, and he releaſeth to A. all his right, this ſhall enure to B. and to his own wife alſo, for by the rule of Littleton it muſt enure to all in the remainder.

But if A. letteth to B. for life, and B. maketh a leaſe to C. for his life, the remainder to A. in fee, A. releaſeth to C. all his right, this is good to perfect the eſtate of C. for his life. But when C. dieth, A. ſhall be in of his old eſtate, for his releaſe could not enure to himſelf to perfect his defeaſible remainder, but his ancient right remaineth. And note that in theſe two caſes the fee is deveſted, and veſted all at one inſtant, in the ſame manner, as if Tenant in tail make a leaſe for life, at the ſame inſtant the eſtate tail is deveſted out of the Donee, and the reverſion in fee out of the Donor, and a new fee veſted in Tenant in tail. And ſo if the husband made a leaſe for life of his wifes land, he deveſteth his own eſtate, that he hath by her right, and the Inheritance of his wife, and at the ſame inſtant veſted a new reverſion in his himſelf.

Vid. 29. Aſſ. 17. 30. H 8. Recov. en value Br. 30. 13. E. 3. entr. cong. Br. 127.

¶ *Mes en ceſt caſe ſi le diſſeiſee confirme leſtate & title celuy en le remainder.* Here is the third caſe wherein the releaſe and confirmation do agree, for

for the Confirmation made to him in the remainder shall avail the Tenant for life, as much as the release shall. Pl. Com. Delamers case. Vid. Sect. 374.

¶ *Pur ceo que le remainder est dependant, &c.* By this some have gathered that if a Disseisor make a lease for life, reserving the reversion to himself, and the Disseisee confirmeth the estate of the Disseisor, that he may enter upon the Disseisee, because the estate of him in the reversion dependeth not upon the estate for life as the remainder; but as one may for by the Confirmation made to him in the reversion, all the right of him that confirmeth is gone, as well as when he maketh it to him in remainder, and he cannot by his entry avoid the estate of the lessee for life, but he must avoid the estate of the lessee, which against his own Confirmation he cannot do, and it hath been adjudged, that if a Disseisor make a lease for life and after by a Fine of the reversion with Proclamations, and the five years past, so as the Disseisee is for the reversion barred, he shall not enter upon the lessee for life. Reported by Sir John Popham chief Justice.

¶ *Le remainder perd defeat.* It is regularly true, that when the particular estate is defeated, that the remainder thereby shall be also defeated, but it faileth in divers cases.

For where the particular estate and the remainder depend upon one title, there the defeating of the particular estate is a defeating of the remainder. But where the particular estate is defeasible, and the remainder by good title, there though the particular estate be defeated the remainder is good. As if the lessor disseise A. lessee for life, and make a lease to B. for the life of A. the remainder to C. in fee, albeit A. re-enter and defeat the estate for life, yet the remainder to C. being once vested by good title shall not be avoided, for it were against reason that the lessor should have the remainder again against his own livery, and this is well warranted by the reason of Littleton in this case. So it is if a lease be made to an Infant for life, the remainder in fee, the Infant at his full age disagree to the estate for life, yet the remainder is good, for that it was once vested by good title, for in both these cases there was a particular estate at the time of the remainder created. Vid. Pl. Com. Colthirsts case.

If a lease be made to A. for the life of B. the remainder to C. in fee. A. dieth before cui. occupantem ryth, here is a remainder without a particular estate, and yet the remainder continueth good. 17. E. 3. 48.

A Rent is granted to the Tenant of the land for life, the remainder in fee, this is a good remainder, albeit the particular estate continued not, for Eo instante that he took the particular estate, Eo instante the remainder vested, and the suspension in judgment of law grew after the taking of the particular estate. 3. E. 3. Abb. Act.

If a man grant a Rent to B. for the life of Alice, the remainder to the heirs of the body of Alice, this is a good remainder, and yet it must vest upon an instant. 7. H. 4. 6.

Sect. 522.

¶ Item si sont deux disseisors, et le disseisee releassa a un de eux, il tiendra son compagnion hors de la terre. Mes si le disseisee confirma le estate de lun, sans plus dire en le fait, aucuns dient q̄ il ne tiendra son compagnion dehors, Mes tiendra joyntment oue luy pur ceo que riens fuit confirme forsque

ALso if there be two disseisors, and the disseisee releaseth to one of them, he shall hold his companion out of the land, but if the disseisee confirm the estate of the one without more saying in the Deed, some say that he shall not hold his companion out, but shall hold jointly with him, for that nothing was con-

¶ This is the fourth case wherein the release and the Confirmation seem to differ, being made unto one of the Disseisors.

¶ *Confirme forsque son estate, &c.* Hereby it appeareth that if the Disseisee confirm the estate of the one Disseisor in the lands, To have and to hold the lands or tenements, or the right of the Disseisee, to him and his heirs, he shall hold out the other Disseisor, and that appeareth by Littleton, first upon these words (Confirm the estate of one) without more saying in the Deed,

Deed, viz. To have and to hold the lands, &c. Secondly, the reason of Littleton in express words is, for that nothing was confirmed but his estate which was joynt. Thirdly, the next two Sections make it plain where the Habendum is added.

Hereby also it appeareth, that a release is more forcible in law than a Confirmation. If the disseisee & a stranger disseise the heir of the disseisor, and the disseisee confirm the estate of his companion, this shall not extinguish his right that was suspended: so as if the heir of the disseisor re-enter, the right of the disseisee is revived. And so it is if the Grantee of a rent-charge and an estranger disseise the Tenant of the land, and the Grantee confirm the estate of his companion, the Tenant of the land re-enter, the rent is revived, for the confirmation extended not to the rent suspended, otherwise it is of a release in both cases.

Sect. 523.

¶ ET pur ceo ascuns ont dit, que si deux joyntenants sont, et lun confirme lestate lauter, que il nad forque joint estat, sicome il avoit advant. Mes si il ad tiels parols en le fait de confirmation, a aver et tener a luy et a ses heires touts les tenements dont mention est fait ẽ le confirmation, donques il ad estate sole en les tenements, &c. Et pur ceo il est bon et sure chose en chescun confirmation daver ceux parolx; A aver et tener les tenements, &c. en fee, ou en fee taile, ou pur terme de vie, ou pur terme dans, solonque ceo que le cas est, ou le matter gist.

AND for this some have said, that if two joyntenants be, and the one confirm the estate of the other, that he hath but a joint estate as he had before, but if he hath such words in the Deed of confirmation, to have and to hold to him and to his heirs all the tenements whereof mention is made in the Confirmation, then he hath a sole estate in the tenements, &c. And therefore it is a good and sure thing in every Confirmation to have these words; To have and to hold the tenements, &c. in fee, or in fee tail, or for term of life, or for term of years, according as the case is or the matter lieth.

¶ AND this Confirmation leaveth the state as it was, and doth not amount to any assurance of the joynture as some have said.

34. E. 3 tit. Confirm. Pl. 13.

¶ *Mes si il ad tiels parols en le fait, &c.* This is plain and evident enough.

¶ *Et pur ceo il est bone & sure chose, &c.* This is good counsel and worthy to be observed.

Sect. 524.

¶ HEre the diversity is apparent between a Confirmation of the estate for life in the land to have and to hold the said state in the land to him and his heirs, this cannot en-

¶ CAr al entent dascuns, si hõe lessa terre a un auter pur terme de vie, et puis confirma son estate que fuit joynt, &c.

FOr to the intent of some, if a man letteth land to another for life, and after confirm his estate which was joint, &c.

state

ſtate que il ad en m la terre, a aver et tener ſon eſtate a luy et a ſes heires, ceſt confirmation quant a ſes heires eſt void, car ſes heires ne poient aver ſon eſtate que ne ſuit forſque pur terme de ſon vie. Mes ſi confirma ſon eſtate p ceux parolx, a aver meſme le terre a luy et a ſes heires, ceſt confirmation fait fee ſimple en ceſt caſe a luy en la terre, pur ceo que les parolx a aver et tener, &c. ba a le terre e nemy al eſtate que il ad, &c.

he hath in the ſame land, to have and to hold his eſtate to him and to his heirs, this confirmation as to his heirs is void, for his heirs cannot have his eſtate which was not but for term of his life. But if he confirm his eſtate by theſe words, to have the ſame land to him and to his heirs, this confirmation maketh a fee ſimple in this caſe to him in the land, for that the words to have and to hold, &c. goeth to the land and not to the eſtate which he hath, &c.

large his eſtate, for his eſtate being but for life, that eſtate cannot be extended to his heirs. But in that caſe if he confirm the ſtate for life in the land in the premiſſes of the Deed, & the Habendum is in this ſort, to have and to hold the land to him and his heirs, this ſhall enlarge his eſtate, and create in him a fee ſimple. 18.E.3.40.

Wherein is to be noted (c) that the Habendum and the premiſſes do in ſubſtance well agree together, and that the Habendum may enlarge the premiſſes but not abridge the ſame. (c) Vid. Pl. Com. in Throgmortons caſe fol. Wrotesleys caſe. 197.

And ſeeing that in conveyances, limitations of remainders are uſual and common aſſurances, it is dangerous by conceits or nice diſtinctions to bring them in queſtion, as have in latter time been attempted.

¶ *Son eſtate* Vide Sect. 650.

Sect. 525.

¶ Item ſi jeo leſſa certaine terre a un feſm ſole pur terme de ſa vie, la quel prent baron, et puis jeo confirma leſtate le baron et ſa feme, a aver et tener pur terme de lour deux vies, en ceſt caſe le baron ne tient jointment ove ſa feſm, mes tient en droit de ſa feme pur terme de ſa vie. Mes ceſt confirmation urera a le baron per voy de remainder p terme de ſa vie, ſi ſurvequiſt ſa feme.

ALſo if I let certain land to a feme ſole for term of her life, who taketh husband, and after I confirm the eſtate of the husband and wife, to have and to hold for term of their two lives. In this caſe the husband doth not hold jointly with his wife, but holdeth in right of his wife for term of her life. But this confirmation ſhall enure to the husband by way of remainder for term of his life, if he ſurviveth his wife.

¶ Here is the fourth caſe wherein the releaſe & confirmation do agree, & in this caſe it is to be obſerved that the Baron hath ſuch an eſtate in the land in the right of his wife as he is capable of a confirmation to enlarge his eſtate, & therefore if the confirmation had bin made of his eſtate to him alone to have & to hold the land to him and to his heirs, this had been good to have conveyed the fee ſimple to him after the deceaſe of his wife, for if in this caſe a Releaſe be made to the husband & his heirs, this is ſufficient to convey the inheritance of the land to the husband. Vid. Sect. 573. 16.H.6.tit.Releaſe 45; 22.E.4.tit.Releaſe. Statham.

¶ *Ne tient jointment ove ſa feme.* For two cauſes, firſt becauſe the

the wife hath the whole for her life. Secondly, Joyntenants muſt (as hath been before ſaid in the Chapter of Joyntenants,) come in by one title. But in this caſe if the Confirmation had been made to the husband and wife, To have and to hold the land to them two and to their heirs, they had been Joyntenants of the Fee ſimple, and the husband ſeiſed in the right of his wife for her life, for the husband and the wife cannot take by moities during the Coverture.

28. E. 3. 20.

If a man letteth land to the husband and wife, to have & to hold the one moity to the husband for term of his life, and the other moity to the wife for her life, and the leſſor confirm the eſtate of them both in the land, To have and to hold to them and to their heirs, by this Confirmation as to the moity of the husband, it enureth only to the husband & his heirs, for the wife had nothing in that moity, but as to the moity of the wife they are Joyntenants as hath bin ſaid, for the husband hath ſuch an eſtate in his wifes moity, (her right as is capable of a Confirmation. But if ſuch a leaſe for life be made to two men by ſeveral moities, and the leſſor confirm their eſtates in the land, To have and to hold to them and to their heirs, they are Tenants in Common of the Inheritance, for regularly the Confirmation ſhall enure according to the quality and nature of the eſtate which it doth enlarge and increaſe.

18. Aſſ. p. 3. 18. E. 3. Confir. 17. 17. E. 3. 68. 28. E. 3. 94. 40. E. 3. 8. Aſſ. 20.

If a leaſe for life be made to A. the remainder to B. for life, and the leſſor confirm their eſtates in the land, To have and to hold to them and their heirs; A. taketh one moity to him and his heirs, and therefore of the one moity he is ſeiſed for life, the remainder to B. for life, and then to him and his heirs: Of the other moity A. is ſeiſed for life, the immediate Inheritance to B. and his heirs, becauſe as to the moity which B. takes, the ſame is executed: as if the reverſion be granted to Tenant for life, and to a ſtranger, it is executed for one moity (as hath been ſaid before) and therefore in this caſe they are Tenants in common.

39 H. 6 9.

If lands be given to two men, and to the heirs of their two bodies begotten, and the Donor confirmeth their two eſtates in the land, To have and to hold the land to them two and to their heirs: In this caſe ſome are of opinion, That they ſhall be Joyntenants of the fee ſimple, becauſe the Donees were Joyntenants for life and (ſay they) the Confirmation muſt enure according to the eſtate which they have in poſſeſſion, and that was joint. But others hold the contrary; for firſt they ſay, That the Donees have to ſome purpoſes ſeveral Inheritances executed, though between the Donees ſurvivor ſhall hold for their lives. Secondly they ſay, That when the whole eſtate which comprehendeth ſeveral Inheritances, is confirmed, the Confirmation muſt enure according to the ſeveral Inheritances, which is the greater and moſt perdurable eſtate, and therefore that the Donees ſhall be Tenants in Common of the Inheritance in this caſe.

Vid. Sect. 573.

¶ *Per voy de remainder, &c.* Here ſome queſtion hath been made of this term Remainder, without any cauſe at all, becauſe in Law it is in nature of a Remitter. As, in caſe of a fine, when a reverſion expectant upon an eſtate for life in A. is granted to B. Et quæ ad ipſum reverti debet poſt mortem A. præfato B. & hæredibus ſuis remanebunt, &c. but a more colourable exception might be taken againſt this word Remaneant there, than in the caſe of Littleton.

Pl. Com. Colthirſts caſe. Doct. & Stud. ca. 21.

(a) 16. H. 6. tit. Releaſe 45
(b) 9. E. 4. 18.
(c) 6. E. 3. 9.
(d) 17. E. 3. 68. b.

It is true, that in (a) 16 H. 6. it is called a Reverſion: in (b) 9. E. 4. it is called a Remainder: in (c) 6. E. 3. it is ſaid, that by the Confirmation an eſtate accrued to the husband for term of his life. In (d) 17. E. 3. the husband, living the wife, ſhall have nothing but in abeyance after the death of his wife. But leſt there ſhould be pugna verborum, which learned and wiſe men ever avoid, all do reſolve, That the eſtate of the husband is good, and that it doth enure by way of increaſe and inlargement of his eſtate. And albeit in this caſe of Littleton, the husband by the Confirmation gaineth an eſtate for life in remainder (as Littleton termeth it) yet if the husband doth waſte, an action of waſte ſhall lie againſt him & his wife, notwithſtanding the mean remainder, becauſe the husband himſelf committeth the waſte, and doth the wrong: and therefore ſhall not excuſe himſelf for his committing of waſte, in reſpect he himſelf hath the remainder, no more than if a man leſſeth to A. during the life of B. the remainder to him during the life of C. if he commit waſte, an action of waſte ſhall lie againſt him.

17. E. 3. 68. b. Vi. Sir Ed. Garies caſe. l. 5. f. 76. b.

Sect. 526.

5. E. 3. 17. b. Pl. Com. 418. b. 38. H. 6. 23. 14. H. 4. 12. 38. E. 3. 35. Pl. Com. Dame Hales caſe. 50. Aſſ. p. 15. 4. H. 6. 5. 7. H 6. 1. 9. H. 6. 52. 37. li. Aſſ. 21 H. 7. 29. 21. E. 4. 40. 26. H. 8. 7.

¶ THis is the fifth caſe wherein the releaſe and Confirmation do agree: and it is to be obſerved, That Chattels reals, as Leaſes for Years, Ward-

¶ MEs ſi jeo leſſa al Feme ſole terre pur terme dans, le quel prent

BUt if I let land to a feme ſole for term of years, who taketh husband, & af-

baron

baron, et puis jeo confirma lestate le baron et sa feme, a aver et tener la terre pur terme d lour dur vies: en cest case ils ont joynt estate en le franktenement de la terre, pur ceo que la feme naboit franktenement adebāt, &c.

ter I confirm the estate of the husband and his wife, to have and to hold the land for term of their two lives: In this case they have a joint estate in the Freehold of the Land, for that the wife had no Freehold before, &c.

ships, and the like, are not given to the husband absolutely, (as all Chattels personals are) by the intermarriage, but conditionally if the husband happen to survive her, and he hath power to alien them at his pleasure: but in the mean time the husband is possessed of the Chattels real in her right.

Secondly, That the husband hath such a possession in her right of the Chattel, as is capable of a Confirmation, or of a Release.

Thirdly, That the confirmation in this case to the husband & wife for their lives, maketh them Joyntenants for life, because a chattel of a Feme Covert may be drowned: and so note a diversity between a lease for life, and a lease for years, made to a Feme Covert; for her estate of Freehold cannot be altered by the confirmation made to her husband and her, as the term for years may, whereof her husband may make disposition at his pleasure.

Sect. 527.

¶ Item si mon disseisor granta a un rent charge hors de la terre dont il moy disseisist, et jeo rehersant le dit grant confirma mesme le grant, et tout ceo que est compris deins mesme le graunt, & puis jeo enter sur le Disseisor, Quære en cest case, si le Terre soit discharge de le Rent ou nemy.

ALso if my Disseisor granteth to one a Rent charge out of the Land whereof he disseised me, and I rehearsing the said Grant, confirm the same Grant, and all that which is comprised within the same Grant, & after I enter upon the Disseisor, *Quære* in this case, if the land be discharged of the Rent or no.

¶ This is the fifth case wherein the Release and Confirmation do differ, for a Release to the Grantee in this case (a) were void. It is holden by some authority since Littl. wrote, That the Disseisee after his re-entry shall not avoid the Rent charge against his own confirmation: and there a general rule is taken, that such a thing as I may defeat by my entry, I may make good by my confirmation.

(a) 11.H.7.28. Lib.1. f.147. Anne Mayows case. 3.H.4.10.

If the Feoffee upon condition grant a Rent charge in fee, & the Feoffor confirmeth it, and after the condition is broken, and the Feoffor enter, he shall not avoid the Rent charge. And so it is if the heir of the Disseisor grant a rent charge, and the Disseisee confirmeth it, and after recover the land, he shall not avoid the rent: and yet in neither of these cases his entry was capable at the time of the confirmation.

Lib.1.f.147,148. Anne Mayows case.

Sect. 528.

¶ Item si un parson dun Eglise charge le glebe de son Eglise per son fait, & puis l' Patron et Ordinarie

ALso if a Parson of a Church charge the Glebe land of his Church by his Deed, and after the Patron & Ordinary con-

¶ *Parson.* Persona in the legal signification it is taken for the Rector of a Church parochial, and is called Persona Ecclesiæ, because he assumeth & taketh upon him the person of the Church, and is said

G'an.l.13 c.23,24.25. Bract.l.4 c.285 &c. Brit.f.234.b.&c. Flet. l.5.c.19,20.& l.6. c.18. Reg. F.N.B.48.49.

ſaid to be ſeiſed in jure Eccleſiæ, and the law had an excellent end herein, viz. That in his perſon the Church might ſue for and defend her right; and alſo be ſued by any that had an elder and better right, and when the Church is full, it is ſaid to be plena & conſulta of ſuch a one Parſon thereof, that is, full & provided of a Parſon, that may vicem ſeu perſonam ejus gerere.

Brit. ubi ſupra.

Perſona Impersonata, Parſon Impersonee is the Rector that is in poſſeſſion of the Church Parochial, be it preſentative, or impropriate, and of whom the Church is full.

8. E. 3. 26. 43. 38. E. 3. 4. 3. Mar. Dyer. 123.

Here are divers things to be noted: First, That the confirmation is of the grant, which in deed is but a meer aſſent by deed to the grant. And therefore it is holden, That if there be Parſon, Patron, and Ordinary, and the Patron and Ordinary give licence by deed to the parſon to grant a rent charge out of the glebe, and the parſon granteth the rent charge accordingly, this is good, and ſhall bind the ſucceſſor, and yet here is no confirmation ſubſequent, but a licence precedent.

7. H. 4. 15.

confirmont meſme le grant, & tout ceo que è compriſe deins m̃ grant, donques le grant eſtoyera en la force, ſolonque l' purport de meſme le graunt. Mes en tiel caſe covient que le Patron eit Fee ſimple en leadowſon, car ſi nad eſtate en Ladowſon forſque pur terme de vie, ou en le taile, donque l' grant ne eſtoyera forſque durant la vie, & la vie le Parſon que grantaſt, &c.

firm the ſame grant, and all that is compriſed in the ſame Grant, then the Grant ſhall ſtand in his force, according to the purport of the ſame Grant. But in this caſe it behoveth, that the Patron hath a Fee ſimple in the Advowſon, for if he hath but an Eſtate for life or in tail in the advowſon, then the grant ſhall not ſtand, but during his life, and the life of the Parſon which granted &c.

Secondly, The Ordinary alone, without the Dean and Chapter, may agree thereunto, either by licence precedent, or confirmation ſubſequent, for that the Dean and Chapter hath nothing to do with that which the Biſhop doth as ordinary, in the life time of the Biſhop.

(b) 19. El. Dy 356. 257. 11. H. 6. 9. 33. H. 8. tit. Charge Br. 58.

Thirdly, (b) But if the Biſhop be patron, there the Biſhop cannot confirm alone, but the Dean and Chapter muſt confirm alſo, for the advowſon or patronage is parcel of the poſſeſſion of the Biſhoprick, and therefore the Biſhop without the Dean and Chapter, cannot make the grant good, but only during his own life, after the deceaſe of the Incumbent, either by licence precedent, or confirmation ſubſequent.

See more of theſe kinds of Confirmations in my Reports. Lib. 2. 39. & 24. l. 2. 153. Lib. 4. 23 24. l. 5. f. 11. 81. l. 10. 6. l. 11. 19. l. 6. 34.

A. Parſon of D. is patron of the Church of S. as belonging to his Church, and preſent B. who by conſent of A. and of the Ordinary grant a rent charge out of the glebe, this is not good to make the rent charge perpetual, without the aſſent of the patron of A. no more than the aſſent of the Biſhop who is patron, without the Dean and Chapter, or no more than the aſſent of the patron, being tenant in tail or for life, as Littleton ſaith. And Littleton here ſaith, that the patron that confirms muſt have a Fee ſimple, meaning to make the charge perpetual. And Littleton after ſaith, that in the caſe of the parſon the fee is in abeyance, and ſeeing the conſent of the patron is in reſpect of his intereſt as heir, it appeareth by Littleton, he may conſent upon condition, otherwiſe it is of an attornment, becauſe that is a bare aſſent. Alſo if the eſtate of the patron be conditional, and he confirmeth, and after the condition is broken, his confirmation is void.

31. E. 3. Grant. 6. 1. 26. Aſſ. 38. 8 Eliz. Dy 25 a Vid. l. f. Le caſe de Deane & Chapter de Norwich.

Fourthly, he that is patron muſt be patron in Fee ſimple, for if he be Tenant in Tail, or Tenant for life, his confirmation or agreement is not good to bind any ſucceſſor, but ſuch as come into the Church during his life. But if the patron be tenant in tail, and diſcontinue the eſtate in tail, the leaſe ſhall ſtand good during the diſcontinuance, or if the eſtate tail be barred, it ſhall ſtand good for ever.

But here is to be obſerved a diverſity between a ſole corporation, as parſon, prebend, Vicar, and the like, that have not the abſolute Fee in them, for to their grants the patron muſt give his conſent. But if there be a Corporation aggregate of many, as Dean and Chapter, Maſter, Fellows, and Scholars of a College, Abbot or Prior, and Convent, and the like, or any ſole Corporation that hath the abſolute Fee, as a Biſhop with conſent of the Dean and Chapter, they may by the Common Law make any grant of or out of their poſſeſſions, without their Founder or Patron, albeit the Abbot or Prior, &c. were preſentable: and ſo it is of a Biſhop, becauſe the whole eſtate and right of the Land was in them, and they may reſpectively maintain a Writ of Right.

12. H. 4. 11. 19. E. 3. 7. 7. Eliz. Dyer. 228. 11. H. 6. 9. 10 Eliz. Dy. 6. E. 3. 10. 2 E. 3. 29. 9. E. 4. 6 2. H. 4 11. 38. E. 3. 19. 25. E. 3. 54.

If a Bishop hath two Chapters, and he maketh a grant, both Chapters must confirm it, or else the successor shall avoid it. But if one of the Chapters be dissolved, then the Confirmation of the other sufficeth, but it needeth not the confirmation of the King who is Founder and Patron of all Bishopricks. Temps. R. 2. tit. grant. 104. 50. E. 3. tit. Assise Statham. 11. El. Dyer 282.

And note a diversity between a confirmation of an estate, and a confirmation of a deed, for if the Disseisor make a Charter of feoffment to A. with a Letter of Attorney, and before livery the Disseisee confirm the estate of A. or the Deed made to A. this is cleerly void, though livery be made after. But if a Bishop had made a Charter of feoffment with a Letter of Attorney, and the Dean and Chapter before livery confirm the Deed, this is a good confirmation, and livery made afterwards is good. And so it hath been adjudged.

The like law is of a confirmation of a Deed of grant of a reversion before attornment.

In the same manner it is if a Bishop at the Common Law had granted lands to the King in fee by Deed, and the Dean & Chapter by their Deed confirm the Deed of the Bishop, and after the Deed of the Bishop is inrolled, this is good, albeit the confirmation of the Dean and Chapter be not inrolled, for the assent upon the matter is made to the Bishop.

But this confirmation that Littleton here speaketh of must be made in the life, and during the incumbency of the parson, and so in the life of the Bishop, or of any other sole Corporation. But it is to be known that grants made by Parsons, Prebends, Vicars, Bishops, Master and Fellows of any Colledge, Dean and Chapter, Master or Gardein of any Hospital, or any having any Spiritual or Ecclesiastical Living are restrained by (e) divers acts of Parliament, so as they cannot grant any rent charge, or to make any alienation, or to make any leases other than such as are mentioned in those Acts which you may read at large. And the expositions upon the same in my (h) commentaries. 33. 3. E. Confirm. 27. 31. E. 3. Abb. 10. 21. H. 7. 1 Vid Sect. 393. & 643. (e) 13. Eliz cap. 10. 1. El. c. 18. El. c. 11. 1. Jac. c. 3. Vid. Sect. 393, & 364. (f) Lib 2. f. 46. l. 4. 76. & 120. l. 5. 9. 6. 14. l. 6. 37. l. 7. 8. l. 11. 67.

Sect. 529.

¶ Item si home lessa terre pur terme de vie, le quel tenant a term de vie charge la terre ove un rent en fee, & celuy en le reversion confirma mesme le grant, le charge est assets bone & effectual.

Also if a man letteth land for term of life, the which Tenant for life charge the land with a rent in fee, and he in the reversion confirm the same grant, the charge is good enough and effectual.

THere is a diversity to be observed where the determination of the rent is expressed in the Deed, and when it is implyed in law. For when Tenant for life granteth a rent in fee, this by law is determined by his death, and yet a confirmation of the grant by him in the reversion make that grant good for ever, without words of inlargement, or clause of distress, which would amount to a new grant. And yet if the Tenant by life had granted a rent to another and his heirs by express words, during the life of the grantor, and the lessor had confirmed that grant, that grant should determine by the death of Tenant for life. 26. Ass. Pl. 38. 45. Ass. Pl. 13. l. 1. f. 147. Anne Mayowes case. 14. Ass. Pl 14.

Tenant for life upon a condition grant a rent in fee, the lessor confirm the grant, and after the condition is broken, the lessor re-enter, he shall not avoid the grant.

Sect. 530.

¶ Item si soit un perpetual chanterie, dont ordinarie nad rien a medler ne a faire, Quære si le Patron del chaunte-

Also if there be a perpetual Chantery wherewith the ordinary hath nothing to do or meddle, *Quære* if the Patron of

THis is meant of a Chauntery Donative wherewith the Ordinary hath not to deal, and by this grant, when Littleton wrote, the Chauntery should have been charged for ever, because no other had any interest in this Chauntery save Vid. Sect. 648.

ſave only the patron and chaunterye prieſt, and the grant is made Concurrentibus iis quæ in jure requiruntur. But ſince Littleton wrote, all, and all manner of free chappels and chaunteries perpetual, whereof Littleton here ſpeaks, are by (a) Acts of parliament given to the crown, and the bodies politick thereof diſſolved. See hereafter, Sect. 648. more at large of all this preſent Section.

ry, et le Chapleine de meſme le chauntery poient charge le chauntery oue un rent charge en perpetuitie.

the Chantery, and the Chaplain of the ſame Chantery may charge the Chantery with a Rent charge in perpetuity.

(a) 27.H.3.c.4. 1.E.6.c.14.

Sect. 531.

¶ HEre Littleton proceedeth according to the former diviſion to ſhew words that in Law do amount to a confirmation. And here is to be obſerved, that ſome words are large and have a general extent, and ſome have a proper and particular application. The former ſort may contain the latter, as Dedi, or Conceſſi may amount to a grant, a feoffment, a gift, a leaſe, a releaſe, a confirmation, a ſurrender, &c. and it is in the Election of the party to uſe to which of theſe purpoſes he will.

Br.l.2.f.29 b.21.H.6. feoffments & faits 102. 22.H.6.42. 14.H.4.36. 19.H.6.44. 7.H.7.16. 2.E.3.Briefe 291. Brooke.tit. Confirm.20. 14.H.7.2. 27.H.6.17. Dy 8.El.4.H 71. 22.E.4.36. 40.E.3.41.

Bracton.l.2 f.59.b.

Eſt autem Confirmatio quaſi quædam ratihabitio, ſufficit tamen quandoque per ſe, ſi etiam in ſe contineat donationem, ut ſi dicat quis, dedi & confirmavi, licet juvari poſſit ex aliqua donatione præcedente.

But a releaſe, confirmation, or ſurrender, &c. cannot amount to a grant, &c. nor a ſurrender to a confirmation, or to a releaſe, &c. becauſe theſe be proper and peculiar manner of conveyances, and are deſtined to a ſpecial end.

¶ Item en aſcun cas ceſt verbe Dedi ou ceſt verbe Conceſſi, ad meſme leffect en ſubſtance, & urera a meſme lentent, come ceſt verbe Confirmavi. Sicome jeo ſue diſſeiſe dun carve de terre, & jeo face tiel fait; Sciant præſentes, &c. quod dedi a le diſſeiſor, &c. vel quod conceſſi a le dit diſſeiſor le dit carve, &c. et jeo deliver tantſolement le fait a luy ſauns aſcun livery de ſeiſin del terre, ceſt un bone confirmation, & auxy ſort en ley, ſicome il avoit en le fait ceſt verbe confirmavi, &c.

ALſo in ſome caſe this Verb *Dedi*, or this Verb *Conceſſi*, hath the ſame effect in ſubſtance, and ſhall enure to the ſame intent, as this Verb *Confirmavi*. As if I be diſſeiſed of a Carve of Land, and I make ſuch a Deed. *Sciant præſentes, &c. quod dedi* to the Diſſeiſor, &c. or *quod conceſſi* to the ſaid Diſſeiſor, the ſaid Carve, &c. and I deliver only the Deed to him without any livery of ſeiſin of the land, this is a good confirmation, & as ſtrong in law, as if there had been in the Deed this Verb *Confirmavi*, &c.

(c) 32.E.3.briefe 291. Brooke tit. Confirm.20. Vid. leſtate de Gloc.c.4. (d) 7.E.3.9.

¶ *Dedi & Conceſſi, &c.* Here is implyed that there be more words than Dedi and Conceſſi, that will amount to a confirmation, as dimiſi. (c) In ancient Statutes and in original Writs, as in the writ of Entry in caſu proviſo, in conſimili caſu ad Communem legem, and many others, this word dimiſi is not applied only to a leaſe for life, but to a gift in tail, and to a ſtate in fee. (d) Alſo if a man make a leaſe to A. for years, and after by his Deed the leſſor Voluit quod haberet & teneret terram pro termino vitæ ſuæ. This is adjudged by this Verb (Volo) to be a good confirmation for term of his life, Benigne enim faciendæ ſunt interpretationes cartarum propter ſimplicitatem laicorum ut res magis valeat quam pereat.

Bracton.

14.H.4.36. Lib.5.f.15.in Newcomens caſe.

And he to whom ſuch a Deed comprehending Dedi, &c. is made, may plead it as a grant, as a releaſe, or as a confirmation at his election.

If a parſon and ordinary make a leaſe for years of the glebe to the patron, and the pa-

Patron by his Deed granteth it over, or if the Disseisor granteth a rent to the Disseisee, and he by his Deed granteth it over, and after re-enter, in both these cases one and the same words do amount both to a Grant, and to a Confirmation in Judgment of Law of one and the same thing, ne res pereat. And so it is if a Disseisor make a lease for life, or a gift in tail, the remainder to the Disseisee in fee, the Disseisee by his Deed granteth over the remainder, the particular Tenant attorneth, the Disseisee shall not enter upon the Tenant for life, or in tail, for then he should avoid his own Grant, which amounted to a Grant of the estate, and a Confirmation also.

Sect. 532.

¶ Item ũ ieo lessa terre a un home pur terme dans, per force de quel il est en possession, &c. Et puis ieo face un fait a luy, &c. Quod dedi & concessi, &c. le dit terre a aver pur terme de sa vie, & delivera a luy le fait, &c. donques maintenant il ad estate en le terre pur terme de sa vie.

ALso if I let Land to a man for term of years, by force whereof he is in possession, &c. and after I make a Deed to him, *Quod dedi & concessi, &c.* the said Land to have for term of his life, and I deliver to him the Deed, &c. then presently he hath an Estate in the Land for term of his life.

¶ Here is the sixth Case wherein the confirmation and the release do agree. And is evident and needeth no explication.

Sect. 533.

¶ Et ũ ieo die en le fait, a aver & tener a luy & a ses heires de son corps engendres il ad estate en fee taile, & ũ ieo die en le fait a aver & tener a luy & a ses heires, il ad estate en fee simple, car ceo urera a luy per force de confirmation denlarger son estate.

AND if I say in the Deed, to have and to hold to him and to his heirs of his body ingendred, he hath an estate in fee tail. And if I say in the Deed, to have and to hold to him and to his heirs, he hath an estate in fee simple. For this shall enure to him by force of the Confirmation to inlarge his estate.

¶ This also is evident and needeth no explication, saving that whensoever a Confirmation doth inlarge and give an estate of Inheritance, there are to be apt words (as Littleton here expresseth them) used for the same.

Sect. 534.

¶ Item ũ homme soit disseisie, & le disseisor devie seisie, & son heire est eins per

ALso if a man be disseised, and the disseisor die seised, and his heir is in by discent,

¶ *Quant al heire del disseisor, &c. les tenements passont per voy de feoffment.* For

the land ſhall ever paſs from him that hath the ſtate of the land in him. As if Ceſty que uſe and his Feoffees after the Statute of 1 R. 3. and before the Statute of 27 H. 8. cap. 10. had joyned in a feoffment, it ſhall be the feoffment of the Feoffees, becauſe the ſtate of the land was in him.

21 H. 7. 34. b. Pl. Com. 59. a. in Wimbiſhes caſe.

So it is if the Tenant for life, and he in the remainder or reverſion in fee joyn in a feoffment by Deed. The Livery of the Freehold ſhall make from the Leſſee, and the inheritance from him in the reverſion or remainder, from each of them according to his eſtate. For it cannot be adjudged by Law, that the feoffment of Tenant for life doth draw the reverſion or remainder out of the Leſſor or him in remainder, or doth work a wrong, becauſe they joyned together.

Pl. Com. 59. a. Pl. Com. 140. in Brownings caſe. 2. H. 5. 7. 13. H. 7. 14. 13. E. 4. 4. a. 27. H. 8. 13. M. 16. & 17. Eliz. 339.

If there be Tenant for life, the remainder in tail, the remainder in tail, &c. and Tenant for life and he in the remainder in tail levy a Fine, this is no diſcontinuance or deveſting of any eſtate in remainder, but each of them paſs that which they have power and authority to paſs.

Lib. 1. fo. 76. Bredon. caſe.

A. Tenant for life the remainder to B. for life, the remainder in tail, the remainder to the right heirs of B. A. and B. joyn in a Feoffment by Deed, albeit it may be ſaid that this is the Feoffment of A. and the Confirmation of B. and conſequently he in the remainder in tail cannot enter for the forfeiture during the life of B. But becauſe B. joyned in the Feoffment which was tortious to him in the remainder in tail, and is Particeps criminis, therefore they forfeited both their eſtates, and he in the remainder in tail might enter for the forfeiture. But if he in the reverſion in fee and Tenant for life joyn in a Feoffment by parol, this ſhall be (as ſome hold) firſt a ſurrender of the eſtate of Tenant for life, and then the feoffment of him in the reverſion, for otherwiſe if the whole ſhould paſs from the Leſſe, then he in the reverſion might enter for the forfeiture, and every mans act (Ut res magis valeat) ſhall be conſtrued moſt ſtrongly againſt himſelf.

17. Eliz. Dyer 339.

diſcent, & puis le diſſeiſee & heire le Diſſeiſor ſont jointment un fait a un auter en fee, & livery de ſeiſin ſur ceo eſt fait (quant al heire le Diſſeiſor, que enſealaſt le fait) les tenemẽts paſſont & vont per meſme le fait p voy de feoffment, & quant al diſſeiſee que enſealaſt meſme le fait, ceo ne vera ſinon p voy de confirmation. Mes ſi le Diſſeiſee en ceſt cas port vieſe dentre en l' Per & Cui en vers lalienee del heir le diſſeiſor. Quære cõmẽt il pledra cel fait envers l'demandant per voy de confirmation, &c. Et ſaches mon fits, q eſt un des pluis honorables, laudables, & profitables choſes en noſtre ley, de aver le ſcience de bien pleder en actions reals & perſonals, & pur ceo ieo toy counſaile eſpecialment de mitter ton courage & cure d ceo appender.

and after the Diſſeiſee, and the heir of the Diſſeiſor make joyntly a Deed to another in fee, and Livery of Seiſin is made upon *this*, (as to the heir of the diſſeiſor that ſealed the Deed) the Tenements do paſs and enure by the ſame Deed by way of Feoffment, and as to the Diſſeiſee who ſealed the ſame Deed, this ſhall enure but by way of Confirmation. But if the Diſſeiſee in this caſe brings a Writ of Entry in the *Per* and *Cui* againſt the alienee of the heir of the Diſſeiſor. *Quære* how he ſhall plead this Deed againſt the Demandant by way of Confirmation, &c. And know, my ſon, that it is one of the moſt honorable, laudable, & profitable things in our Law, to have the ſcience of well pleading in actions reals and perſonals, and therefore I counſel thee eſpecially to imploy thy courage and care to learn this.

And it is to be obſerved, that Littleton here putteth a diſcent, ſo as the entry of the Diſſeiſee is not lawful, for if the Diſſeiſor and Diſſeiſee joyn in a Charter of feoffment, and enter into the Land, and make Livery, it ſhall be accounted the feoffment of the Diſſeiſee, and the confirmation of the Diſſeiſor.

Quære

¶ *Quære coment il pledera ceſt fait, &c.* He may plead the Feoffment of the heir of the Diſſeiſor, and the Confirmation of the Diſſeiſee, as it hath been pleaded and allowed. Lib. 1. fo. 146, 147. Mayowes caſe.

¶ *Et ſaches mon fits, que eſt un de pluis honorable, &c.* Here is to be obſerved the excellency of good pleading, and Littletons grave advice, that the Student ſhould imploy his courage and care for the attaining thereof: which he ſhall attain unto by three means: Firſt by reading, ſecondly by obſervation, and thirdly by uſe and exerciſe. For in ancient time the Serjeants and Apprentices of Law did draw their own pleadings, which made them good pleaders. And in this ſenſe Placitum may be derived à Placendo, quia omnibus placet. See my Preface to the 9. Book of my Reports.

Now ſeeing good pleading is ſo honourable and excellent, and that many a good cauſe is daily loſt for want of good and orderly pleading, it is neceſſary to ſet down ſome few rules (amongſt many) of the ſame, to facilitate this learning, that is ſo highly commended to the ſtudious Reader. For when I diligently conſider the courſe of our books of years and terms from the beginning of the reign of Edw. 3. I obſerve, that more jangling and queſtions grow upon the manner of pleading, and exceptions to form, than upon the matter it ſelf, and infinite Cauſes loſt or delayed for want of good pleading. Therefore it is a neceſſary part of a good common Lawyer to be a good Prothonotary. And now we will perform our promiſe.

The order of good pleading is to be obſerved, which being inverted great prejudice may grow to the party tending to the ſubverſion of Law. Ordine placitandi ſervato, ſervatur & jus, &c.

Firſt in good order of pleading a man muſt plead to the juriſdiction of the Court. Secondly to the perſon, and therein firſt to the perſon of the Plaintiff, and then to the perſon of the Defendant. Thirdly to the Count. Fourthly to the Writ. Fifthly to the Action, &c. (a) which order and form of pleading you ſhall read in the ancient Authors agreeable to the Law at this day, and if the Defendant miſorder any of theſe, he loſeth the benefit of the former.

(a) Bracton li. 5. fo. 400. Britton. fo. 41. a. & 122. Fleta li. 6. ca. 35, 36. &c. 40. E. 3. 9. b. 17. E. 3. 74. 8. E. 3. 5. & 9. 35, H. 6. 13.

The Count muſt be agreeable and conform to the Writ, the bar to the Count, &c. and the Judgment to the Count, for none of them muſt be narrower or broader than the other.

A Count or Declaration, which anciently and yet is called Narratio, ought to contain two things, (b) viz. Certainty and Verity, for that it is the foundation of the Suit, whereunto the adverſe party muſt anſwer, and whereupon the Court is to give his Judgment: (c) Certa debet eſſe intentio & narratio, & certum fundamentum, & certa res quæ deducitur in judicium. But it muſt be underſtood that there be three kinds of Certainties: Firſt to a common intent, and that is ſufficient in a bar which is to defend the party and to excuſe him. (d) Secondly a certain intent in general, as in Counts, Replications, and other pleadings of the Plaintiff, that is to convince the Defendant, and ſo in Inditements, &c. Thirdly a certain intent in every particular, as in Eſtoppels.

(b) Pl. Com. 81. 11. H. 4. 89. 34. H. 6. 48. 19. R. 2. Action ſur le caſe. 52. 22. E. 3. 19. 30. E. 3. 9.

(c) 7. H. 6. 17. 32. H. 6. 12. 15. Pl. Com. 33. b. (f) 34. H. 6. 48. 8. H. 5. 4. b. 21. E. 4. 52. 5. E. 3. 15. 39. H. 6. 3. 10. H. 6. 2. 21. H. 7. 26. (g) 48. E. 3. 8. 2. H. 4. 13. 6. H. 4. 2. b. 10. E. 4. 2. F. N. B. 156. c. 11. E. 3. Aide 32. 9, H. 6. 59. 10. E. 4. 4. (h) Pl. Com. Brets caſe, 342. 27. H. 8. 27. 27. H. 6. 9. H. 7. (i) 40. E. 3. 31, 32, 33. 41. E. 3. 11. 9. H. 6. 45. 27. E. 3. 81. 44. E. 3. 23. 45. E. 3. Double plea. 39. 43. E. 3. 21. 36. H. 6. 29. 37. H. 6. 23. 33 H. 6. 51. 15. E. 4. 25. 7. H. 4. 12. 41. E. 3. Double plea. 78. (k) Pl. Com. 81. 11. H. 4. 89. 34. H. 6. 48. 19. R. 2. Action ſur le caſe. 52. 22. E. 3. 19. 30. E. 3. 9. (l) 5. H. 7. 8. 6. E. 4. 2. 21. E. 4. 44. 27. H. 8. 4. 22. H. 6. 17. E. 4. 7. 22. E. 4. 8. (m) Pl. Com. 65. a, b. & 100. 376. & 410. 22. H. 6. 38. 19. H. 6. 49. 37. H. 6. 14. 36. H. 6. 5. 21. E. 4. 54. 11. H. 6. 15. 38. H. 6. 23. 42. Aſſ. 3. 48. E. 3. 11. 4. E. 4. 12. 9. E. 3. 46. 21. E. 4. 52. 35. H. 6. 36. 10. H. 7. 9. 15. 11. H. 7. 8. 22. E. 3. 2. 34. H. 6. 27. 12. H. 8. 3. 6. 7. E. 4. 32. 9. E. 4. 24. 8. E. 4. 31. 8. Aſſ. 29. 5. E. 4. 70. 3. E. 4. 1.

(c) Certainty.

(d) Certainty.

(e) He pleadeth a plea in abatement of the Writ (which of ancient times was, and yet is called Breve) or a plea after the latter continuance ought to plead it certainly.

(f) The ancient forms of Counts are to be duely obſerved, as Cum dimiſit, or Cum dedit, and not to ſay, that he was ſeiſed and demiſed, &c. (And yet if he ſay ſo, it maketh not the Count vicious) (g) but in a bar replication or other kind of pleading, the party muſt allledge a ſeiſin in the Leſſor or Donor, and ancient forms of pleading are alſo to be obſerved.

(g) Certainty.

(h) Counts, or ſuch as be in nature of Counts (as an Avowry, wherein the Defendant is an Actor) need not to be averred, but all other pleas in the Affirmative ought to be averred, Et hoc paratum eſt verificare, &c. but pleas meerly in the Negative ought not to be averred, becauſe a Negative cannot be proved.

(i) Where there is but one Tenant or one Defendant, he cannot have two ſuch pleas, as each of them do go to the whole, but where there are divers, each of them may plead ſeveral pleas which extend to the whole.

(k) That which is alledged by way of conveyance or inducement to the ſubſtance of the matter need not to be ſo certainly alledged, as that which is the ſubſtance it ſelf.

(l) Every plea muſt be direct, and not by way of argument, or rehearſal.

(m) Where a matter of Record is the foundation or ground of the ſuit of the Plaintiff, or of the ſubſtance of the plea, there it ought to be certainly and truly alledged, otherwiſe it is, where it is but conveyance. But the proceedings and ſententes in the Eccleſiaſtical Courts may be allegged ſummarily as that a Divorce was had between ſuch parties, for ſuch a cauſe, and before ſuch a Judge, and Concurrentibus iis quæ in jure requiruntur, for the Judge muſt be alledged, to the intent the Court may write to him if it be denied.

Good matter muſt be pleaded in good form, in apt time, and in due order, or otherwiſe great advantages may be loſt.

(n) General

(n) 35.H.6.35. 21.E.4. 51.9.H.4.5.19.H.6. 73. 5.E.4.12.10.E.4.18. 13.H.7.18.36.H.8. Pleading Br. 160.

(n) General eſtates in Fee ſimple may be generally alledged, but the commencement of Eſtates tail, and other particular eſtates regularly muſt be ſhewed, unleſs in ſome caſes where they are alledged by way of inducement, and the life of Tenant in tail, or for life, ought to be averred.

(o) V. Sect. 193. 3.H.6. 47. 41.E.3.22. 9.Aſſ. 9. 22. Aſſ. 45. 2. E. 3. 42. 13.E.3.Anc.Demeſne 15 20.E.3.ib.45. 7. H. 7. 8. lib.10.fo.91.li.11.fo.10

(o) When any ſpecial and ſubſtantial matter is alledged by either party, that ought to be eſpecially anſwered, and not to be paſſed over by a general pleading.

(p) 3.H.7.3.26. Aſſ.10. 14.H.4.4.b.27.H.6.8.b. 21.H.6.Debt.43.7.H.6. 24. 31. 35. H. 6. 48. 47.E.3.14.Pl.Com.46.a Li. 3. fo. 59. Linc. Col. caſe.

(p) The Plea of every man ſhall be conſtrued ſtrongly againſt him that pleadeth it, for every man is preſumed to make the beſt of his own caſe: Ambiguum placitum interpretari debet contra proferentem.

(q) 22. E. 4. 40. 2, 3. 20. E.4. 10. 21. E.4.36. 22. H. 6. 50.

(q) Every Plea that a man pleadeth, ought to be triable, for without trial the cauſe can receive no end: Et expedit reipublicæ ut ſit finis litium.

(r) 40. E. 3. 40. 43. 46. 41. E. 3. 2. 18. E. 3. 16. 26.E. 3. 68. 42.E. 3. 3. 10. 46. 6. E. 3. 37. 8. E. 3. 20. 10. E. 3. 60. 14. H. 4. 15. 12.E.4.1. 38. E. 3. 28. 7. H. 7. 3.

(r) The Tenant before his default ſaved, may plead all Pleas which prove the Writ abated, as death, &c. or matters apparent in the Writ, but no Plea, which proves it abatable, as taking of Huſband, &c.

(ſ) 10.E.4.3. 27.H.6. 8. H. 7. 13. 9.H. 7. 26. 37. H. 6. 1. 27. H.8.13. 21.H.7. 25. 11.H.4. 33. Pl.Com.79. 16.E.4. 10. 1. H. 7. 33. 20.H.7. 1. 6.E. 4. 4, 5. 21.E.4.54. 22. H. 6. 47. 11.H. 6.8. 25. E.3. 50.b. 23.Aſſ.7. 2. Eliz. Dyer 184.

(ſ) When a man is authoriſed to do any thing by the Common Law, by Grant, Commiſſion, Act of Parliament, or by Cuſtom, he ought to purſue the ſubſtance and effect of the ſame accordingly.

(t) Pl. Com. 149. b. & 105. 2. 37. H. 6. 38. b

(t) All neceſſary circumſtances implied by Law in the Plea need not to be expreſſed, as in the Plea of a Feoffment of a Mannor Livery and Attornement are implied.

(u) 18. E. 4. 16. b. 22.E.4.2.76. 5.H.7.13. 38.H. 6. 17, 18, 19. 18. E. 3. 34. Pl. Com. 229. b. Lib. 8. 133. Turners Caſe.

(u) When a Count, Warre, Replication, &c. is defective in reſpect of omiſſion of ſome circumſtance, as time, place, &c. there it may be made good by the Plea of the adverſe party, but if it be inſufficient in matter, it cannot be ſalved.

(w) 5.H.7.34.5.E.3.26. 22. H. 6. 28.

(w) Every man ſhall plead ſuch Pleas as are pertinent for him according to the quality of his caſe, eſtate, or intereſt, as Villeiſors, Tenants, Incumbents, Ordinaries, and the like.

(x) 19. H. 6. 30. 32. Pl. Com. 232. b. & fo.502.per Dyer & 503

(x) Surpluſage ſhall never make the Plea vicious, but where it is contrariant to the matter before.

(y) 13.H.4. 17. 10.E.4. 18. 33. H. 6. 54. 35.H.6. 30. 21. H. 7. 32. Bract. li. 3. fo. 154. Pl. Com. 87.b. 26. H.6. Gard. 58.

(y) That which is apparent to the Court by neceſſary collection out of the Record need not to be averred.

(a) 2.H.7.15.4.H.7.12. 10.H 7. 12. 13.H.7.19. 26. H. 8. 5. b.

(a) A man is bound to perform all the covenants in an Indenture: if all the covenants be in the affirmative, he may generally plead performance of all, but if any be in the negative, to ſo many he muſt plead ſpecially (for a negative cannot be performed) and to the reſt generally.

b So if any be in the diſiunative, he muſt ſhew which of them he hath performed. So if any are to be done of Record, he muſt ſhew that ſpecially, & cannot involve that in general pleading.

(b) Li.8.fo.133. Turners caſe, & fo.120. Benhams caſe, Li. 9.25.61. Li.10. 100.

(c) In many caſes the Law doth allow general pleading, for avoiding of prolixity and tediouſneſs, and that the particular ſhall come on the other ſide.

(d) Pleadings which amount to the general Iſſue are not to be allowed, but the general Iſſue is to be entred, Vid. Sect. 10. 485. 499.

(c) 12.H.8. 6, 7. 2.R.3 17.14 E.4.7.9.E.4. 19.

(e) Every plea ought to have his proper concluſion, as a plea to the Writ to conclude to the Writ, a plea in Bar to conclude to the Action, an Eſtoppel to relie upon the Eſtopels. Et ſic de ſimilibus.

(d) 44.E.3.2. 34.H.6.5 10.H.6.6. & 17.12.E.4. 11. 14. 14. H. 8. 24. 7. E. 3. 12. 17. E.3.44.

(f) When the concluſion of a plea, Et iſſint, Et ſic, is in the affirmative, it ſhall not want the ſpecial matter, for there the ſpecial matter is the ſubſtance and foundation of the concluſion, and affirmed by the ſame. But where the concluſion is in the negative, there the ſpecial matter regularly is waved.

(e) 18. H.6.33.22.H.6. 53. 36. H. 6.17.38.H.6. 18. 25. 5. E. 3. 15. 16. 22.Aſſ.33.2. Eliz. Dyer 184.

(g) Whenſoever ſpecial matter is pleaded, and the concluſion (Et ſic) is to the point of the Writ or Action, the ſpecial matter is waved.

The names of legal Records are, a Writ, a Count, a Bar, a Replication, a Rejoynder, a Rebutter, a Surrebutter, &c.

(f) Pl. Com. 14. 15. 2.E.4.18.39.E.3.14.32. 33.8.E.3.57. Qu. Imp. 25. 18. H. 6. 30.7.4.18. 38. Aſſ. 14. 24. E.3.48. 22. E. 3. 13. 38. H. 6. Sect. 485.

(h) New and ſubtil devices and inventions of pleading ought not to alter any principle of Law, whereof you have heard plentifully before.

The Count or Declaration is an expoſition of the Writ, and addeth time, place, and other neceſſary circumſtances, that the ſame may be triable, and any imperfection in the Count doth abate the Writ.

Pleadings are divided into Bars, Replications, Rejoynders, Surrejoynders, Rebutters, and Surrebutters, &c. They are words of Art, and are called Bars, Barræ, ſo called, becauſe it barreth the plaintiff of this Action. Replicationes, à Replicando; Rejunctiones, à Rejungendo; Rebutter, of the French word Rebouter, i. à Repellendo, To put back or avoid, and ſo of Surrebutter.

But each party muſt take hed of the ordering of the matter of his pleading, leſt his Replication depart from his Count, or his Rejoynder from his Bar, Et ſic de cæteris.

(g) 7. E. 4. 26. 11. H. 7. 4. 12. H. 7. 6. 33. H. 6. 9. 37. 43.

(i) In ancient Writers a Bar is called Exceptio peremptoria, a Replication was then called Replicatio, as now it is: a Rejoynder, Triplicatio; a Surrejoynder, Quadriplicatio, & ſic ulterius in infinitum.

(h) V. Bract. li. 5. fo. 400. Flet. li. 6. ca. 37.

A departure in pleading is ſaid to be when the ſecond plea containeth matter not purſuant to his former, and which fortifieth not the ſame, and thereupon it is called Deceſſus, becauſe he departeth from his former plea, and therefore whenſoever the rejoynder (taking one example for all) containeth matter ſubſequent to the matter of the Bar, and not fortifying the ſame, this is regularly a departure, becauſe it leaveth the former, and goeth to another matter. As if in an aſſiſe the tenant plead a diſcent from his Father, & giveth a colour, the demandant intituleth himſelf by a feoffment from the tenant himſelf, the plaintif cannot ſay, That that feoffment was upon condition, and to ſhew the condition broken, for that ſhould be a clear departure from his Bar, becauſe it containeth matter ſubſequent. But in an aſſiſe, if the tenant pleadeth in Bar, That I. S. was ſeiſed & infeoffed him, &c. and the plaintif ſheweth, That he himſelf was ſeiſed in fee, until by I.S. diſſeiſed, who infeoffed the Tenant, and he re-entred, the defendant may plead a releaſe of the plaintif to I. S. for this doth fortifie the Bar. 39.E.3.13.b.29 H.6.15. 6.H.7.8. 21 H.6 32. Pl.Com. 105.1.Mar. Dyer.95.28.H.8.l.31. 6.H.7.8. 3.H.6.Departure 2.

If a man plead performance of covenants, and the plaintif reply, that he did not ſuch an act according to his covenant, the defendant ſaith, that he offered to do it, and the plaintif refuſed it, this is a departure, becauſe the matter is not purſuant, for it is one thing to do a thing and another to offer to do it, and the other refuſed to do it: therefore that ſhould have been pleaded in the former plea. Vide & Cave in a Quare impedit, what plea ſhall be ſafely pleaded in primo placito. 8.El.Dy.253. 23.El.Dy. 271.6.E.3.3. 40.E.3.32. 43.E.3.11. 1.E.4.4. 18.E.4.24. 5.H.7.27. 8.H.6.11.33.H.6.14.

When a man in his former plea pleadeth an eſtate made by the Common Law, in the ſecond plea regularly he ſhall not make it good by an Act of Parliament. So when in his former plea he intituleth himſelf generally by the Common Law, in his ſecond plea he ſhall not enable himſelf by a cuſtom, but ſhould have pleaded it firſt. Pl.Com.105.b.Fulmerſtons caſe.21.H.7.25. 27.H.8.3.21.H.7.17. 37.H.6.5.38.H.6.25.

If a man plead an eſtate generally, (as for example a feoffment in fee) he in his ſecond plea ſhall not maintain it by other matter tant amount in law, as by a diſſeiſin and releaſe, or by a leaſe and releaſe, or a gift in tail in Bar, and in the ſecond plea a recovery in value, for this is a departure: but he in that caſe ſhall count of a gift, and maintain it in his replication by a recovery in value, becauſe he could have no other count. 21.H.7.25.1.E.4.4. 3.H.7.5.7.H.7.2.

See more of this matter, where the plaintif varying from time or place alledged in the count of actions tranſitory, ſhall commit no departure. Vid.Sect.485.

The plea that contains duplicity or multiplicity of diſtinct matter to one & the ſame thing, whereunto ſeveral anſwers (admitting each of them to be good) are required, is not allowable in law. And this rule you ſee extendeth to pleas perpetual or peremptory, & not to pleas dilatory, for in their time and place a man may uſe divers of them, & hereof ancient writers (i)ſpeak notably; Sicut Actor una Actione debet experiri ſaltem illa durante, ſic oportet tenentem una exceptione, dum tamen peremptoria (quod de dilatoriis non eſt tenendum) quia ſi liceret pluribus uti exceptionibus peremptoriis ſimul & ſemel ſicut fieri poterit in dilatoriis ſic ſequeretur, quod ſi in probatione unius defecerit ad aliam probandam poſſit habere recurſum quod non eſt permiſſibile, non magis quam aliquem ſe defendere duobus baculis in duello, cum unus tantum ſufficiat. Pl.Com.139.142. i Fleta l.6.c.35. Bract.l.5.f.400.

But where the tenant or defendant may plead a general Iſſue, there upon the general Iſſue pleaded, he may give in evidence as many diſtinct matters to bar the action or right of the demandant, or plaintif, as he can.

A ſpecial verdict may contain double or treble matter, and therefore in thoſe caſes the tenant or defendant may either make choice of one matter, & to plead it to bar the demandant or plaintif, or to plead the general Iſſue, and to take advantage of all, or he may plead to part one of the pleas in Bar, and to another part another plea, and his concluſion of his plea ſhall avoid doubleneſs, and hereby neither the Court nor the Jury is ſo much inveigled, as if one plea ſhould contain divers diſtinct matters. And if the tenant make choice of one plea in Bar, and that be found againſt him, yet he may reſort to an action of an higher nature, and take advantage of any other matter. And the law in this point is by them that underſtand not the reaſon thereof miſliked, ſaying, Nemo prohibetur pluribus defenſionibus uti. 17.E.3.73. 39.H.6.27.

And it is worthy of obſervation, that in the raigns of Edward the ſecond, Edward the firſt, and upwards, the pleadings were plain & ſenſible, but nothing curious, evermore having chief reſpect to matter, and not to forms of words, and were often holpen with a Quæſitum eſt, and then the queſtions moved by the Court, and the anſwers by the parties were alſo entred into the Rolle. But even in thoſe days the forms of the regiſter of original writs were then punctually obſerved, and matters in law excellently debated and reſolved, and where any great difficulty was, then it was reſolved by all the Judges & Sages of the law (who were for matters in law called Concilium Regis) and their aſſembly and reſolution was entred into the Rolle. As for example, In the great caſe in a Quare impedit, between the King and the Prior of Worceſter, concerning an appropriation, whether it were a Mortmain, the Record ſaith, Ad quem diem venit prædictus Prior per Attornatum ſuum, &c. Et examina- Hill.32 E.1.Cor.Reg. in fine Rotul.

examinatis & intellectis recordo & proceſſu coram toto concilio tam Theſaurario & Baronibus de Scaccario, quam Cancellario, ac etiam Juſticiariis de utroque Banco inſpecta cauſa, pro qua, pro Domino Rege dicunt, quod ad ipſum regem pertinet præſentare, &c. conſideratum eſt, &c. **For in thoſe days though the Chancellor and Treaſurer were for the moſt part men of the Church, yet were they expert and learned in the Laws of the Realm.**

As for example, in the time of the Conqueror, Egelricus Epiſcopus Ciceſtrenſis vir antiquiſſimus, & in Legibus ſapientiſſimus, **as elſewhere I have ſaid.**

(a) Ockam. f. 17. (a) Nigellus Epiſcopus Elienſis Hen. 1. Theſaurarius in temporibus ſuis incomparabilem habuit Scaccarii Scientiam, & de eadem ſcripſit optimè.

(b) Paſch. 5. R. 1. Cor. Rege. (b) Henricus Cant. Epiſcopus, H. Dunelm' Epiſcopus, Willielmus Elienſis Epiſcopus. G. Roffenſ. Epiſcopus.

(c) 1. H. 3. Rot. pat. Bract. ſæpe. (c) Martinus de Pateſhul Clericus Decanus divi Pauli London' conſtitutus fuit capitalis, Juſtic' de Banco, quia in Legibus hujus Regni peritiſſimus.

(d) Bract. ſæpe. (d) Will'us de Raleigh Clericus Juſticiarius Domini Regis.

(e) 8. E. 3. 31. (e) Johannes Epiſcopus Carlienſis tempore, H. 3.

Robertus Paſſelewe Epiſcopus Ciceſtrenſis tempore H. 3.

(f) Rot. pat. 24. H 3. (f) Robertus de Lexintonio Clericus conſtitutus capitalis Juſtic' de Banco.

(g) Libereius de Legibus extat ſcript. temp. E. 1. (g) Johannes Britton Epiſcopus Hereford.

(h) Rot. pat. 17. E. 2 (h) Henricus de Stanton Clericus, conſtitutus fuit capitalis Juſticiarius ad placita, **with many others. And ſo were divers and many of the Nobility, who when matters of great difficulty were brought into the upper Houſe of Parliament by writ of Erroꝛ, adjournment, oꝛ other parliamentary courſe, did by the aſſiſtance of the reverend Judges, who ever attended in that court, judge and determine the ſame; as by former and ancient recoꝛds, and ſpecially by the ſaid recoꝛd of 5. R. 1. do manifeſtly appear, and therefoꝛe the Lords of Parliament were called for thoſe purpoſes,** Concilium Regis, **and like to the aforementioned recoꝛd there be very many.**

12. H. 4. 3. **In the raign of Edw. the third, pleadings grew to perfection both without lameneſs and curioſity, for then the Judges and profeſſoꝛs of the law were excellently learned, and then knowledge of the law flouriſhed, the Serjeants of the law, &c. drew their own pleadings, and therefoꝛe truly ſaid that reverend Juſtice** Thirning, **in the raign of H. 4. that in the time of Edw. 3. the law was in a higher degree than it had been any time before; for (ſaith he) before that time the manner of pleading was but feeble in compariſon of that it was afterward in the raign of the ſame King.**

In the time of Hen. the Sixth the Judges gave a quicker ear to exceptions to pleadings, than either their predeceſſoꝛs did, oꝛ the Judges in the raign of Edw. the Fourth, when our Authoꝛ flouriſhed, oꝛ ſince that time have done, giving no way to nice exceptions, ſo long as the ſubſtance of the matter were ſufficiently ſhewed. And as in the raign of King Edward the Third, by an Act of parliament (i) it is provided, that counts oꝛ declarations ſhould not abate ſo long as the matter of the Action be fully ſhewed in the Declaration and Writ, ſo ſince our Authoꝛ wroꝛe, in the raign of Queen Elizabeth proviſion is made, That after demurrer the Judges ſhall give judgment accoꝛding to the right of the cauſe and matter in law, without regarding any imperfection, defect, oꝛ want of foꝛm in any writ, retoꝛn, plaint, declaration, oꝛ other pleading oꝛ courſe of proceeding whatſoever, except ſuch as the party demurring ſhall ſpecially ſhew. In which Act, appeals, and indictments of Felony, Murder, oꝛ Treaſon concerning mans life, and the foꝛfeiture of his lands and goods, are excepted. An excellent and a profitable law concurring with the wiſdom and judgment of ancient and latter times, that have diſallowed curious and nice exceptions tending to the overthrow oꝛ delay of Juſtice, apices juris non ſunt jura: yet it is good for a learned profeſſoꝛ to make all things plain & perfect, and not to truſt to the after aid oꝛ amendment, by foꝛce of any Stat. leſt his clients cauſe matcheth not therewith; and as it is in phyſick for the health of a mans body, ſo it is in remedies for the ſafety of a mans cauſe. In law, Præſtat cautela quam medela.

i 36. E. 3. c. 15. 46. E. 3. 21. Dy. 299. l. 8. f. 161. Lib. 10. f. 131.

Li. 10. f. 88. Pl. Com. 421.

But now let us return to our Authoꝛ.

Sect. 535, 536, 537.

ITem ſi ſoyent Seignioꝛ et Tenant, meſque le ſeignioꝛ confirma leſtate que l' tenãt ad en les tenements, uncoꝛe le Seignioꝛie entierment demurt

ALſo if there be Lord & tenant, albeit the Lord confirm the eſtate which the Tenant hath in the Tenements, yet the Seigniory remaineth entire to the

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Lord as it was before.

Sect. 536.

¶ EN meſme le manner eſt, ſi home ad un Rent charge hors de certeine terre, & il confirma leſtate que le tenant ad en la terre, uncore demurt a le confirmor le Rent charge.

IN the ſame manner is it, if a man hath a Rent-charge out of certain Land, and he confirm the eſtate which the Tenant hath in the Land, yet the Rent-charge remaineth to the Confirmor.

Sect. 537.

¶ EN meſme le manner eſt, ſi un home ad common de paſture en auter terre, ſil confirma eſtate de le tenant de la terre, rien departer de luy de ſon common, mes ceo nient obſtant le common demurt a luy come fuit adevant.

IN the ſame manner it is, if a man hath common of paſture in other Land, if he confirm the eſtate of the Tenant of the Land nothing ſhall paſs from him of his Common, but notwithſtanding this, the Common ſhall remain to him as it was before.

¶ Here is the ſixth Caſe wherein the releaſe and confirmation do differ, for by the releaſe of the Seigniory, Rent-charge or common are extinct. And ſo theſe three Sections be evident and need no explication, ſaving that ſome do gather upon theſe two laſt Sections and the next enſuing, that a man cannot abridge a rent-charge or common Paſture by a Confirmation as he may do a rent-ſervice in reſpect of the privity between the Lord and Tenant, ſo as (ſay they) a tenure may be abridged by a confirmation, but not a rent-charge or Common: and therefore Littleton beginneth the next Section with an Adverb adverſative, viz. (mes but) &c. But a man may releaſe part of his rent-charge, or Common, &c.

Sect. 538.

¶ MEs ſi ſoient Seignior & tenant, le quel tenãt tient de ſon Seignior per le ſervice de fealty & 20. ſ. d. Rent, ſi le Seignior per ſon fait confirma leſtate le tenant, a tener per 12. d. ou per un denier, ou per un maile: en ceſt caſe le tenant eſt diſcharge

BUt if there be Lord and Tenant which Tenant holdeth of his Lord by the ſervice of fealty, and 20. ſhillings rent, if the Lord by his Deed confirm the eſtate of the Tenant to hold by 12. pence or by a peny, or by half a peny. In this caſe the Tenant is diſcharged of all the

¶ AND the reaſon wherefore no ſervice of another cannot be reſerved upon the confirmation is, becauſe as long as the ſtate of the land continueth it cannot by the confirmation of the Lord be charged with any new ſervice. So as it is evident that the Lord by his confirmation may diminiſh and abridge the ſervices, but to reſerve upon the confirmation new ſervices he cannot, ſo long as the former eſtate in the Tenancy continueth. And as where a confirmation doth inlarge

28. E. 3. 92. 93. 26. Aſſ. 37. 6. El. Dier. 230. b. 7. E. 4. 25. a. 21. E. 4. 26. per Brian. 10. E. 3. tit. Avowry 100

inlarge an eſtate in land, there ought to be priuity, as hath been ſaid, ſo regularly where a Confirmation doth abridge ſervices, there ought to be priuity alſo.

de touts les auters ſerbices, & ne rendra rien a le Seignior, forſqz ceo q̄ eſt compriſe deins meſme le Confirmation.

other Services, and ſhall render nothing to the Lord, but that which is compriſed in the ſame Confirmation.

And therefore here Littleton putteth his caſe of Lord and Tenant between whom there is priuity. And therefore if there be Lord, Meſne and Tenant the Lord cannot confirm the eſtate of the Tenant to hold of him by leſſer ſervices, but this is void, for that there is no priuity between them, and a Confirmation cannot make ſuch an alteration of Tenures.

7. E. 3. 19. 22. E. 3. 18. 6.

4 E. 3. 19.

And the caſe in 4. E. 3. maketh nothing againſt this opinion, for there the caſe in ſubſtance is this, John de Bonvile held certain lands of Ralfe Vernon, and before the Statute of Quia emptores terrarum, levied a Fine of the ſame lands to the Abbot of Cogſall and his Succeſſors to hold of the chief lord (which was Ralfe Vernon) by the ſervices due and accuſtomed. Ralfe Vernon made a Charter to the ſaid Abbot in theſe words. Conceſſi etiam eidem Abbati & ſucceſſoribus ſuis relaxavi & quietum clamavi totum jus, &c. quod habeo, vel potero habere in omnibus tenementis quæ idem Abbas habet de dono Johannis de Bonvile. Tenendum de me & hæredibus meis in puram & perpetuam Eleemoſynam. And adjudged that it was a good tenure in Frankalmoigne, which caſe proveth nothing that the lord Paramount may by his Confirmation to the Tenant paravail extinct the Meſnalty (as it is abridged by Maſter Fitzherbert in the title of Confirmation, Pl. 21.) for the immediate lord did there make the ſaid Charter, and not any lord Paramount. (And therefore it is ever good to rely upon the Book at large, for many times Compendia ſunt diſpendia, and Melius eſt petere fontes, quam ſectari rivulos.) And of this opinion was Maſter Plowden upon good adviſement and conſideration.

4. E. 3. 9. 9. E. 3. 1. 12. E. 4. 11. 16. E. 3. fines 4. 6. E. Dier. 230.

And here is the ſeventh caſe wherein the Releaſe and Confirmation doth agree, for if there be Lord and Tenant by Fealty and twenty ſhillings rent, the Lord may releaſe all his right in the Seignioꝛy oꝛ in the tenancy, ſaving Fealty and ten ſhillings rent, but he cannot take a new kind of ſervice, for he may alwei abridge his ſervices upon a Releaſe as upon a Confirmation. And as there is required priuity when the Lord abridgeth the ſervices of his Tenant by his Confirmation: ſo muſt there be alſo, when the lord by his releaſe abridgeth the ſervices of his Tenant. And therefore the lord Paramount cannot releaſe to the Tenant paravail ſaving to him part of his ſervices, but the ſaving in that caſe is void.

Britton, f. 57. 177. 40. E. 3. 21. 47. 48. 18. E. 3. 26. 50. Aſſ. 6. 14. H. 4. 8.

¶ *Et rendra rien a ſon Seignior forſque ceo que eſt compriſe, &c.* Which words are thus to be underſtood, that the Tenant ſhall not render any more Rent oꝛ annual Service to the lord than is contained in the Deed, but other things notwithſtanding the ſaid Confirmation the Tenant ſhall yield to the Lord, as reliefe, aid pur file marier, and aid pur faire fitz Chivaler, becauſe theſe are incidents to the tenure that remain, and ſhall not be diſcharged without ſpecial words, by the general words of all other Actions, Services and Demands. And ſo if a man hold of me by Knights Service, Rent, Suit, &c. and I releaſe to him all my right in the Seignioꝛy, excepting the Tenure by Knights ſervice, oꝛ confirm his eſtate to hold of me by Knights Service only for all manner of Services, Exactions, and Demands. Yet ſhall the lord have Ward, Marriage, Reliefe, Aid pur file marier, & pur faire fitz Chivaler, for theſe be incidents to the tenure that remain. But it is holden, that if a man make a gift in tail by Deed reſerving two ſhillings rent a luy & ſes heires pro omnibus & omnimodis ſervitiis, exactionibus ſecularibus & cunctis demandis, if the Donee die his heir of full age, the Donoꝛ ſhall have no reliefe, becauſe in the oꝛiginal Deed of the gift in tail it is expreſly limited, that by the Service of two ſhillings Rent he ſhall be quit of all Demands, (and Reliefe lieth in Demand) and by reaſon of thoſe words ſay they there cannot any Reliefe become due, but ſome do hold the contrary in that caſe.

13. R. 2. tit. avowry 89. Nota dictum. Fitzh.

Sect. 539.

¶ MEs ſi le Seignioꝛ voile per fait de confirmation, que le tenant en ceſt cas doit

BUt if the Lord will by his Deed of Confirmation that the Tenant in this caſe ſhall yield render,

render a luy un eſperuer, ou un roſe annualment a tiel feaſt, &c. ceſt confirmation eſt voide, pur ceo que il reſerva a luy un nobel choſe que ne fuit parcel de ſes ſerbices devant la confirmation, & iſſint le ſeignior poit bien per tiel confirmation abridger les ſerbices, per queux le tenant tient de luy, mes il ne poit reſerver a luy nobel ſerbices.

to him a Hawk or a Roſe yearly at ſuch a feaſt, &c. this confirmation is void, becauſe he reſerveth to him a new thing which was not parcel of his ſervices before the confirmation: And ſo the Lord may well by ſuch confirmation abridge the ſervices by which the Tenant holdeth of him, but he cannot reſerve to him new ſervices.

¶ This upon that which hath been ſaid before in the next preceding Section is evident, and needeth no further explication.

Sect. 540.

¶ Item, ſi ſoit ſeignior, meſne, & tenant, & le tenant eſt un Abbe, que tient de meſne per certaine ſerbice annualment, le quel nad aſcun cauſe daver acquitãce enders ſon meſne, pur porter briefe de Meſne, &c. en ceſt cas, ſi le meſne confirma leſtate q̃ labbe ad en la terre, a aver & tener la terre a luy & a ſes ſucceſſors en frankalmoigne, &c. en ceſt cas le confirmation eſt bone, & adonques labbe tiendra de le meſne en frankalmoigne. Et la cauſe eſt pur ceo que nul nobel ſerbice eſt reſerbe, car touts les ſerbices eſpecialment ſpecifies ſont extincts, & nul rent eſt reſerbe al meſne forſque que labbe tient de luy la terre, & ceo eſt il devant la confirmation, car celuy que tient en frankalmoigne, ne doit faire aſcun corporal ſerbice, iſſint que per tiel confirmation il appiert, que le meſne ne reſerva a luy aſcun nobel ſerbice, mes que les tenements ſerront tenus de luy come ceo fuit devant. Et en ceſt

ALſo, if there be Lord, Meſne, and tenant, and the tenant is an Abbot that holdeth of the meſne by certain ſervices yearly, the which hath no cauſe to have acquitance againſt his meſne for to bring a writ of Meſne, &c. in this caſe if the Meſne confirm the eſtate that the Abbot hath in the land, to have and to hold the land unto him & his ſucceſſors in frankalmoigne, or free almes, &c. in this caſe this confirmation is good, and then the Abbot holdeth of the Meſne in frankalmoigne: and the cauſe is for that no new ſervice is reſerved, for all the ſervices ſpecially ſpecified be extinct, and no rent is reſerved to the Meſne, but the Abbot ſhall hold the land of him as it was before the confirmation, for he that holdeth in frankalmoigne ought to do no bodily ſervice, ſo that by ſuch confirmation it appeareth the meſne ſhall not reſerve unto him no new ſervice, but that the lands ſhall be holden of him as it was before, and in this

caſe labbe avera un briefe de meſne, ſil ſoit diſtreiñ en ſon default per force de le dit confirmation, lou per caſe il ne puiſſoit aver un briefe advant, &c.

caſe the Abbot ſhall have a writ of Meſne if he be diſtrained in his default, by force of the ſaid confirmation, where percaſe he might not have ſuch a writ before.

4.E.3.19. 22.E.3.15.b. the Lord Wakes caſe. 10.E.3 5. 15.E.3.Confirmat.8. 4.E.3.19.20. F.N.B. 136.h. & q. 4.E.4.35. 31.E.1. Meſne. 55. 11.E.3. Avowry 100. 22.E.3.18.b. 30.E 3.13 16.H.3.Avowry 243.

¶ HEre our Author having ſeen the former Books putteth his caſe, that the meſne may by the confirmation to hold in Frankalmoigne, and not the Lord Paramount.

¶ *Et en ceſt caſe labbe avera briefe de meſne.* Here is to be noted, that upon a Confirmation to hold in Frecalmoigne there lyeth a writ of Meſne, albeit the cauſe of acquital begin after the Seignior. And ſo upon ſuch a Confirmation the Tenant ſhall have. Contra formam feoffamenti.

Sect. 541.

45.E.3.10. 30.H.6. tit. bar 59. Regiſtrum 102. 1 H.6.cap.5. Brook tit. property 28.

¶ HEre is to be obſerved a diverſity between the cuſtody of the body of a Ward within age, and a right of inheritance in the body of a Villein in groſs, for a man may be put out of poſſeſſion of the cuſtody of his Ward, but not of his villein in groſs, no more than a man can be of his priſoner which he hath taken in war.

Alſo of things that are in grant, as Rents, Commons, and the like, it is at the election of the party whether he will be diſſeiſed of them or no, as ſhall be ſaid after in his proper place. But of a villein in groſs he cannot at all be diſſeiſed. (a) Non valet confirmatio niſi ille qui confirmat ſit in poſſeſſione rei vel juris unde fieri debet confirmatio, & eodem modo niſi ille cui confirmatio fit, ſit in poſſeſſione.

(a) Bracton.lib 2. 59.b. 24.E.3. tit. diſcont.16. 42 E.3.18. 40.E. 3.17. 43.E.3.4. 9.E.4. 8. Dier.10.Eliz. Growches caſe.

And materially doth Littleton put his caſe of a Villein in groſs, for of a Villein regardant to a Mannor, the Lord may be put out of poſſeſſion, for by putting him out of poſſeſſion of the Mannor which is the principal, he may likewiſe be put out of poſſeſſion of the Villein regardant which is but acceſſory. And by the recovery of the Mannor the villein is recovered. But if another doth take away my Villein in groſs or regardant, he gaineth no poſſeſſion of him. And this doth well appear by the writ of Nativo habendo, for that writ is not brought againſt any perſon in certain (becauſe no man can

¶ Item ſi jeo ſue ſeiſie dun villein come de villein en groſs, & un auter luy prent hors de ma poſſeſſion, enclaimãt luy deſtre ſon villein la ou il naveit aſcun droit daver luy come ſon villein, & puis jeo confirma a luy leſtate que il ad en mon villein, teſt confirmation ſemble void, pur ceo que nul poit aver poſſeſſion de un home come de villeiñ en groſs, ſi non celuy que ad droit de luy aver come ſon villein en groſs. Et iſſint entant que celuy a que le confirmation fuit fait, ne fuit ſeiſie de luy come de ſon villein a le temps de confirmation fait, tiel confirmation eſt void.

ALſo if I be ſeiſed of a villein as of a villein in groſs, and another taketh him out of my poſſeſſion, claiming him to be his villein there where he hath no right to have him as his villein, and after I confirm to him the eſtate which he hath in my villein, this confirmation ſeemeth to be void, for that none may have poſſeſſion of a man as of a villein in groſs, but he which hath right to have him as his villein in groſs. And ſo inaſmuch as he to whom the confirmation was made, was not ſeiſed of him as of his villein at the time of the confirmation made; ſuch Confirmation is void.

can gain the poſſeſſion of him. But the Writ is to this effect; Rex vic' Salutem, præcipimus tibi quod juſtè & ſine dilatione habere facias A. B. nativum & fugitivum ſuum, &c. ubicunque inventus fuerit, &c. & prohibemus ſuper foris facturam noſtram ne quis eum injuſtè detineat, ſo as detain him one may, but to poſſeſs himſelf of him, and to diſpoſſeſs the Lord he cannot.

And if a man might have been diſpoſſeſſed of a Villein in groſs, or of a Villein regardant (unleſs he be diſpoſſeſſed of the Mannor alſo, as hath been ſaid) the Law would have given a remedy againſt the wrong doer, as the law doth in the caſe of a Ward.

Now ſeeing it doth appear by our books (a) (and by Littleton himſelf by implication ſpeaking only of a villein in groſs) that if a man be diſſeiſed of the Mannor whereunto the Villein is regardant, he is out of poſſeſſion of his Villein, and ſo an Advowſon appendant, and the like. Hereby (Littleton putting his caſe of a Villein in groſs) and by divers Authori=ties a point controverted in our books (*) is reſolved, viz. that by the grant of the Mannor without ſaying Cum pertinentiis, the Villein Regardant, Advowſon appendant, and the like do paſs, for if the Diſſeiſor ſhall gain them as incidents to the Mannor, whoſe eſtate is wrongful, A multo fortiori the Feoffee, who cometh to his eſtate by lawful conveyance, ſhall have them as incidents. But where the entry of the Diſſeiſee is lawful, he may ſeiſe the Villein regardant, or preſent to the Advowſon, &c. before he enter into the Mannor, otherwiſe it is where his entry is not lawful, and ſo are the antient Authors (b) to be intended.

(a) Bracton. fol 243. Britton, fol. 126.

(*) 9.E.4.38. 3.H.4.15. 18.E.3.44. 16.E 3. Quar. Imp. 146. 19 R.2. Treſp. 255. 19.H.6.33. 21.H.6.9. 32.H.6.33. 5.H.7.36. 38.10 H.7.9.F.N.B.33.q 22.H.6. 33. per Moyle. 30.E.3.31. 39.E.3.21. 43.E.3.12.

(b) Bracton, fol. 242. 243 Britton, fol. 126. Fleta, acc.

Sect. 542.

¶ Mes ē ceſt cas, ſi tiels parols fueront en le fait, &c. Sciatis me dediſſe & conceſſiſſe tali, &c. talem villanum meum, ceſt bone, mes ceo urra per force & voy de grant & nemy per voy de confirmation, &c.

But in this caſe if theſe words were in the deed, &c. *Sciatis me dediſſe & conceſſiſſe tali, &c. talem villanum meum*, this is good, but this ſhall enure by force and way of grant, and not by way of confirmation, &c.

¶ Here it is to be obſerved, that a man hath an inheritance in a Villein, whereof the wife of the Lord ſhall be endowed as hath been ſaid, for in him a man may have an eſtate in Fee or Fee tail for life or years. And therefore Littleton is here to be underſtood, that in the Grant there were theſe words (his heirs) or elſe nothing paſſed but for life, as of other things that lye in Grant.

2.H.6.F.N.B. 77.a.b.

24.E.3.Diſcont. 16.

Sect. 543.

¶ Et aſcun foits ceux verbs Dedi & conceſſi, ureront per voy de extinguiſhment del chole don ou grant, ſicome un tenant tient de ſon ſeignior per certeine Rent, & le Seignior grant a per ſon fait a le tenant & a ſes heires le Rent, &c. ceo urera a le tenant per voy de extinguiſhment, car per cel grant le Rent eſt extinct, &c.

And ſometimes theſe verbs *Dedi & conceſſi*, ſhall enure by way of extinguiſhment of the thing given or granted, as if a Tenant hold of his Lord by certain Rent, and the Lord grant by his deed to the tenant and his Heirs the rent, &c. this ſhall enure to the tenant by way of extinguiſhment, for by this grant the rent is extinct, &c.

And this grant of the rent ſhall enure by way of releaſe, &c. 3.E.3.12. & 3.Aſſ.7.

Sect.

Sect. 544.

¶ En meſme le manner eſt lou un ad un rent charge hors de certaine terre, & il graunta al tenant de la terre le rent charge, &c. Et la cauſe eſt, pur ceo que appiert, per les parols del grant, que le volunt le donor eſt, que le tenant avera le rent, &c. et entant que il ne puit aver ne perceiver alcun rent hors de ſon terre demeſne, pur ceo le fait ſerra intendue & prís pur le pluis advantage & availe pur le tenant que puit eſte prís, a ceo eſt per voy dextinguiſhment.

IN the ſame manner it is where one hath a Rent-charge out of certain Land, and he grant to the Tenant of the Land the Rent-Charge, &c. And the reaſon is, for that it appeareth by the words of the Grant, That the will of the Donor is, That the Tenant ſhall have the rent, &c. and inaſmuch as he cannot have or perceive any rent out of his own Land, therefore the deed ſhall be intended and taken for the moſt advantage, and avail for the tenant, that it may be taken, and this by way of extinguiſhment.

34. H. 6. fol. 41. ¶ But if the Grantee of the Rent-charge granteth it to the Tenant of the Land and a ſtranger, it ſhall be extinguiſhed but for the moiety: and ſo it is of a Reliquiſt.

Sect. 545.

¶ Item ſi jeo leſſa Terre a un home pur terme dans & puis jeo confirma ſon eſtate ſans pluis parolx mitter en le fait, per cel il nad pluis greinder eſtate que pur terme dans, ſicome il avoit advant.

ALſo if I let Land to a man for term of years, and after I confirm his eſtate, without putting more words in the Deed, by this he hath no greater eſtate than for term of years, as he had before.

Sect. 546.

¶ Mes ſi jeo releſſa a luy mon droit que jeo aye en le terre ſans plus parols mitter en le fait, il ad eſtate de franktenement. Iſſint poyes entend mon fits divers grands diverſities perenter Releaſes & confirmations.

BUt if I Releaſe to him all my right which I have in the Land, without putting more words in the Deed, he hath an eſtate of Freehold. So thou maiſt underſtand (my ſon) divers great diverſities between Releaſes and Confirmations.

In theſe two Sections is the ſeventh caſe wherein a releaſe and confirmation do differ.

Sect.

Sect. 547.

¶ Item, ſi jeo eſteant deins age leſſa terre a un auk pur terme de xx. ans, & puis il graunte le terre a un auter p̄me de x. ans, iſſint il granta forſque partel de ſon terme, en ceſt caſe quant jeo ſue de pleine age, ſi jeo releſſa al Grauntee de mon leſſee, &c. ceſt releaſe eſt void, pur ceo que il ny ad aſcun p̄vitie perenter luy & moy, &c. Mes ſi jeo confirme ſon eſtate, donque ceſt confirmation eſt bone. Mes ſi mon Leſſee graunta tout ſon eſtat a un auk, donqs mō releaſe fait a l' grātee ē bone & effectual.

ALſo if I being within age, let land to another for term of xx. years and after he granteth the land to another for term of x. years ſo he granteth but parcel of his term: In this caſe when I am of full age, if I releaſe to the Grantee of my Leſſee, &c. this Releaſe is void, becauſe there is no privity between him and me, &c. but if I confirm his eſtate, then this confirmation is good. But if my Leſſee grant all his eſtate to another, then my Releaſe made to the Grantee is good and effectual.

¶ HEre are two things to be obſerved: First, That the leaſe of an Enfant in this caſe is not void but voidable. Secondly, This is the eighth caſe put by Littleton, where in the Releaſe and confirmation do differ. 7.E.4.6 b. 18.E.4.2. 9.H.7.24.

Sect. 548.

¶ Item, ſi home grantā un rēt charge iſſuant hors de ſon terre a un auter pur terme de ſon vie, & puis il confirma ſon eſtate en le dit Rent, a aver & tener a luy en ſe taile ou en ſe ſimple, ceſt Confirmation eſt voyd, quant a enlarger ſon eſtate, pur ceo que celuy que confirme naveit aſcun reverſion en le Rent.

ALſo if a man grant a Rent-charge iſſuing out of his land to another for term of his life, and after he confirmeth his eſtate in the ſaid Rent; To have and to hold to him in fee tail or in fee ſimple, this Confirmation is void as to inlarge his eſtate, becauſe he that confirmeth hath not any reverſion in the Rent.

¶ HEre the Diverſity is apparent, between a Rent newly created, and a Rent in eſſe: which needeth no explication. Only this is to be obſerved, That Littleton intendeth his Deed of Confirmation not to contain any clauſe of Diſtreſs, for otherwiſe, as to the Confirmation the Deed is void, but the clauſe of Diſtreſs doth amount to a new grant, as in the Chapter of Rents hath been ſaid. 21.E.3.47. 15.E.4.8.b. Pl.Com.35. 8.H.4.19.

Sect. 549.

¶ MEs ſi home ſoit ſeiſie en ſe de Rent ſervice ou de

BUt if a man be ſeiſed in fee of a Rent-ſervice, or Rent-charge,

Rent

Rent charge, & il grant le Rent a un auter pur terme de vie, & le tenant atturna, et puis il confirma leſtate de le grantée en fée taile, ou en fée ſimple, ceſt confirmation eſt bone, quant a enlarger ſon eſtate, ſolonqz les parols le confirmation, pur ceo que celuy q̃ confirmast al tẽps de confirmation, aboit un reverſion del Rent.

and he grant the rent to another for life, and the Tenant attorneth, and after he confirmeth the eſtate of the Grantee in fee tail, or in fee ſimple, this confirmation is good, as to enlarge his eſtate according to the words of the confirmation, for that he which confirmed at the time of confirmation had a reverſion of the rent.

¶ HEre is the eighth caſe wherein the releaſe and confirmation doth agree, and it is here to be obſerved, that to the grant of the eſtate for life Littleton doth put an attornment, becauſe it is requiſite, but to the Confirmation to the Grantee of the rent to enlarge his eſtate, there is none neceſſary, and therefore he putteth none: but of this more ſhall be ſaid in the Chapter of Attornment. Sect. 556. 575.

Sect. 550.

¶ MEs en cas avantdit lou home graunt un Rent charge a un auter pur terme de vie, ſil voile q̃ le grantée averoit eſtate en le taile, ou en fée, il covient que le fait de grant del Rent charge pur terme de vie, ſoit ſurrender ou cancel, & donques de faire un nobel fait dautiel rent charge. A aver & perceiver a le grantée en le taile, ou en fée, &c. Ex paucis plurima concipit ingenium.

BUt in the caſe aforeſaid where a man grant a rent-charge to another for term of life, if he will that the Grantee ſhould have an eſtate in tail, or in fee, it behoveth that the Deed of grant of the rent charge for term of life be ſurrendred or cancelled, & then to make a new deed of the like rent-charge: To have and perceive to the grantee in tail or in fee, &c. *Ex paucis plurima concipit ingenium.*

Vide Sect. 636.

¶ *Surrender ou cancel.* Note by cancellation of the Deed the rent which lieth only in grant ceaſeth (as here it appeareth) as well as by the Surrender. And the reaſon wherefore (if the grantor make a new grant of the rent, and not enlarge it by way of confirmation, as Littleton muſt be intended) the deed ſhould be ſurrendred or cancelled, is leſt the Grantor ſhould be doubly charged, viz. with the old grant for life, and with the new grant in fee, or as hath been ſaid, the Grantor may grant to the Grantee for life and his heirs, that he and his heirs ſhall diſtrein for the rent, &c. and this ſhall amount to a new grant, and yet amount to no double charge, wherof you may ſee before in the Chapter of Rents.

CHAP. 10. Of Attornment. *Sect.* 551.

¶ Attornment eſt, come ũ ſoit Sñr & tenãt, & le Sñr voile granter p ſon fait les ſervices dõ sẽ aun auẽ pur terme dans, ou pur terme de vie, ou en taile, ou en fee, il covient que le tenant atturna al grauntee en le vie le grantor, p force & vertue del grant ou autrement le grant eſt void. Et atturnement eſt nul auter en effect forſq quant le ẽ ad oye del grant fait p ſ Sñr, q meſme le tenant agrea per parol a le dit grant, ſicome adire a le grauntee, jeo moy agree a le grant fait a vous, &c. ou jeo ſue bien content de le graunt fait a vous, mes le puis common atturnemẽt eſt, adire, Sir, jeo atturna a vous per force del dit graunt, ou jeo debeigne ũe tenant, &c. ou liberal grantee un denier, ou un maile, ou un farthing per voy dattornement.

Attornment is, as if there be Lord and Tenant, and the Lord will grant by his Deed the ſervices of his Tenant to another for term of years, or for term of life, or in tail, or in fee, the Tenant muſt Attorn to the Grantee in the life of the Grantor by force and vertue of the grant or otherwiſe the grant is void. And Attornment is no other in effect, but when the tenant hath heard of the grant made by his Lord that the ſame tenant do agree by word to the ſaid grant, as to ſay to the Grantee, I agree to the Grant made to you, &c. or I am well content with the grant made to you, but the moſt Common Attornment is, to ſay Sir, I Attorn to you by force of the ſaid Grant, or I become your tenant, &c. or to deliver to the grantee a penny, or a half penny, or a farthing by way of Attornment.

¶ *Attornment* is an Agreement of the Tenant to the grant of the Seigniory, or of a rent, or of the Donee in tail or tenent for life or years, to a grant of a reverſion or remainder made to another. It is an antient word of art, and in the Common Law ſignifieth a torning or attorning from one to another, we uſe alſo Attornamentum as a Latine word, and Attornare to attorn. And ſo Bracton (a) uſeth it, Item videndum eſt ſi Dominus attornare poſſit alicui homagium & ſervitium tenentis ſui contra voluntatem ipſius tenentis, & videtur quod non. Bracton, lib. 2. fol. 81: Britton, f. 105. b. 176. & Fleta, lib. 3. cap. 6. (a) Bracton. l. 2. f. 81. b. Fleta, Britton ubi ſupra

And the reaſon why an attornment is requiſite, is yelded in old Books to be, Si Dominus attornare poſſit ſervitium tenentis contra voluntatem tenentis, tale ſequeretur inconveniens, quod poſſit eum ſubjugare capitali inimico ſuo, & per quod teneretur Sacramentum fidelitatis facere ei qui eum damnificare intenderet. Bracton, lib. 2. fol. 81. b. Britton, ubi ſupra.

¶ *Il covient que le tenant attorna al grantee en la vie del grantor &c.* And ſo muſt he alſo in the life of the Grantee, and this is underſtood of a grant by deed. And the reaſon hereof is, for that every grant muſt take effect as to the ſubſtance thereof in the life both of the grantor and the Grantee. And in this caſe if the grantor dieth before attornment, the Seigniory, Rent, Reverſion, or Remainder deſcend to his Heir, and therefore after his deceaſe the attornment cometh too late, ſo likewiſe if the Grantee dieth before attornment, an attornment to the heir Vide Litt. fol. 128. 11. H. 7. 19. Lib. 1. fol. 104. 185. Shelleyes caſe. 40. Aſſ. 19. 34. H. 6. 7. 20. H. 6. 7.

heir is void, for nothing deſcended to him, and if he ſhould take, he ſhould take it as a Purchaſor, where the heirs were added but as words of limitation of the eſtate, and not to take as Purchaſors.

But if the grant were by fine, then albeit the Conuſor or Conuſee dieth, yet the grant is good. For by fine levied the ſtate doth paſs to the Conuſee and his heirs; and the Attornment to the Conuſee or his heirs at any time to make priuity to diſtrain is ſufficient. But all this is to be taken as Littleton underſtood it, viz. of ſuch grants as have their operation by the Common Law. For ſince Littleton wrote if a fine be levied of a Seigniory, &c. to another to the uſe of a third perſon and his heirs, he and his heirs ſhall diſtrain without any Attornment, becauſe he is in by the Statute of 27. H. 8. cap. 10. by transferring of the ſtate to the uſe, and ſo he is in by act in Law.

34. H. 6. 7. 10 H 6. 7. Bracton, lib. 2. fol. 81, 82. acc. Lib. 6. fo. 68. Sir Moyls Finches Caſe. 27. H. 8. cap. 16. Vid. Sect. 584.

And ſo it is and for the ſame cauſe, if a man at this day by Deed indented and inrolled according to the Statute, bargaineth and ſelleth a Seigniory, &c. to another, the Seigniory ſhall paſs to him without any Attornment, and ſo it is of a rent, a reverſion, and a remainder. So as the law is much changed, and the antient priviledge of tenants, donees, and leſſees much altered concerning attornment ſince Littleton wrote.

But if the Conuſee of a fine before any attornment by Deed indented & inrolled, bargaineth and ſelleth the Seigniory to another, the bargainee ſhall not diſtrain becauſe the bargainor could not diſtrain. Et ſic de ſimilibus, for nemo poteſt plus juris ad alium transferre quam ipſe habet. Vide Sect. 149. where upon a recovery, the recoveror ſhall diſtrain and advow without attornment. Lib. 6. ubi ſupra. Vide Sect. 149.

A grant to the King or by the King to another, is good without attornment, by his Prerogative. 49 E. 3. 4. 34. H 6. 8. 6. E. 4. 13.

¶ *Attornement eſt nul auter en effect, &c.* It is to be underſtood that there be two kind of attornments, viz. an attornment in deed or expreſs, and an attornment in law or implicite. Of attornment expreſs or in deed Littleton ſpeaketh here, and of attornment in law he ſpeaketh after in this Chapter. And to both theſe kinds of attornments there is an incident inſeparable, that is, that the tenant hath notice of the grant; for an attornment being (an agreement or conſent to the grant, &c.) he cannot agree or conſent to that which he knoweth not. And the uſual pleading is, to which grant the Tenant attorned. And therefore if a Bayly of a Mannor who uſed to receive the rents of the tenants, purchaſe the Mannor, and the tenants having no notice of the purchaſe, continue the payment of the rents to him, this is no attornment. So if the Lord levy a fine of the Seigniory, and by fine take back an eſtate in fee, the tenant continueth the payment of the rent to the firſt Conuſor without notice of the fines, this is no attornment. But it is to be known, that there be two kind of notices, viz. a notice in deed or expreſs, whereof Littleton here ſpeaketh, when he ſaith, that the Tenant agreeth to the grant, and a notice in law or implied, whereof Littleton hereafter ſpeaketh in this Chapter. Lib. 2 fol. 67. b. Tookers caſe. 12. Eliz. Dier 302. Tookers caſe ubi ſupra. Lib. 2. Tookers caſe ubi ſupra.

¶ *Del grant fait per ſon Seigniar.* Here is to be ſeen when the thing granted is altered, what becometh of the attornment.

If there be Lord, Meſne, and Tenant, and the Meſne grant over his Meſnalty by Deed, the Lord releaſeth to the tenant, whereby the Meſnalty is extinct, and there is a rent by ſurpluſage, an attornment to the grant of this rent ſecke is good, although the quality of that part of the rent is altered, becauſe it is altered by act in law.

If a reverſion of two Acres be granted by Deed, and the leſſor before attornment levies a fine of one of them, and the tenant attorn to the grantee by deed, this is good for the other acre.

(a) If the reverſion be granted of three acres, and the leſſee agree to the ſaid grant for one acre, this is good for all three, and ſo it is of an attornment in law if the reverſion of three acres be granted, and the leſſee ſurrender one of the acres to the grantee, this attornment ſhall be good for the whole reverſion of the three acres according to the grant. (a) 18. E. 3. tit. variance 63. 22. E. 3. 18. Tookers caſe ubi ſupra.

¶ *Et le tenant agrea.* Hereafter in this Chapter Littleton doth teach what manner of tenant ſhall attorn.

¶ *Agrea per parol, &c.* And ſo he may, and more ſafely by his Deed in writing.

¶ *Sicome adire a le grantee, &c.* Here is to be ſeen to what manner of Grantees the attornment is good. Regularly the attornment muſt be according to the grant either expreſly, or impliedly. Of the firſt Littleton hath here ſpoken. 39 H. 6. 3. Tookers caſe ubi ſupra.

Im-

Impliedly, as if a reverſion be granted to two by Deed, and the Leſſee attorn to one of them according to the grant, this attornment is good, but not to veſt the reverſion only in him to whom attornment is made, but it ſhall enure to both the Grantees, for that is according to the grant, and for that it cannot veſt the reverſion only in him to whom the attornment is made. And ſo it is if one Grantee dieth, the attornment to the Survivor is good. Tookers caſe, ubi ſupra. 11.H.7.22.

If the Lord grant by deed his Seignior to A. for life, the remainder to B. in fee, A. dieth and then the Tenant attorn to B. this attornment is void, becauſe it is not according to the grant, for then B ſhould have a remainder without any particular eſtate. 20. H.7 6.

If a reverſion be granted to a man and a woman, they are to have moities in law, but if they entermarry and then attornment is had, they ſhall have no moities, (and yet by the purport of the grant they are to have moities) becauſe it is by act in law. Tookers caſe, ubi ſupra. 11.Com.187.483.

If a Feme grant a reverſion to a man in fee and marry with the Grantee, the leſſee attorn to the husband, this is a good attornment in law to the husband. 2.R.2. tit. Attornment 8. L.4.f.61.Hemlings caſe.

If a reverſion be granted by Deed to the uſe of I. S. and the leſſee hearing the Deed read, or having notice of the contents thereof attorn to Ceſty que uſe, this is an implyed attornment to the grantee. Temps E.1, Attorn. 22, 18 E.4.7.

If a reverſion be granted for life, the remainder in tail, the remainder in fee, the attornment to the grantee for life ſhall enure to them in the remainder to veſt the remainder in them.

And in thoſe caſes if the Tenant ſhould ſay, that I do attorn to the grantee for life, but that it ſhall not benefit any of them in remainder after his death, yet the attornment is good to them all, for having attorned to the Tenant for life, the law, (which he cannot controll) doth veſt all the remainder. And of this more ſhall be ſaid hereafter in this Chapter.

Littleton here putteth five examples of an expreſs attornment, but of them the laſt is the beſt, becauſe the ear is not only a witneſs of the words, but the eye of the delibery of the penny, &c. and ſo there is dictum & factum. And any other words which import an agreement or aſſent to the grant, do amount to an attornment. And albeit theſe five expreſs attornments be all ſet down by Littleton, to be made to the perſon of the grantee, (b) yet an attornment in the abſence of the grantee is ſufficient, for if he doth agree to the grant either in his preſence or in his abſence, it is ſufficient. (b) Lib.2.fol.68.69. Tooke.s caſe. 28 H.8.tit. Attornment Br.40.

Sect. 552.

¶ Item, ſi le Seignior graunt le ſervice de ſon tenant a un home, & puis per un fait portant un darreine date, il granta meſmes les ſervices a un auter, & l'tenant attorn a le ſecond grantee, ore le dit grauntee ad les ſervices, & comẽt que apres le Tenant voile attorner a le primer grauntee, ceſt clerement void, &c.

ALſo if the Lord grant the ſervice of his tenant to one man and after by his Deed bearing a latter date he grant the ſame ſervices to another, and the Tenant attorn to the ſecond Grantee, now the ſaid Grantee hath the ſervices, and albeit afterwards the Tenant will attorn to the firſt grantee, this is clearly void, &c.

¶ HEre it is to be obſerved, that Littl. expreſſeth not what eſtate is granted, and very materially, for if the former grant were in fee, and the latter grant were for life, and the tenant doth firſt attorn to the ſecond Grantee, he cannot after attorn to the firſt Grantee to make the fee ſimple paſs, for that ſhould not be according to the grant, but in that caſe the attornment to the firſt is countermanded. And ſo it is if a Reverſion expectant upon an eſtate for life be granted to another in fee, and after the Grantor before attornment confirm the eſtate of the leſſee in tail, the Attornment to the Grantee for the fee ſimple is void.

In the ſame manner, if a Reverſion upon an eſtate for years be granted in fee, and the leſſee confirm the eſtate of the leſſee for life, he cannot afterwards attorn.

11.H.7.19.2.R.2. ubi ſupra.
P.3.Eliz. Bendloes. Hemlings caſe ubi ſupra

If a Feme ſole maketh a leaſe for life or years reſerving a rent, and granteth the reverſion in fee, and taketh husband, this is a Countermand of the Attornment.

Where our Author putteth his caſe of the whole reverſion, if two Coparceners be of a reverſion, and one of them granteth her moity by Fine, the conuſee ſhall have a Quid juris clamat for the moity.

11.H.7.12.

If in the caſe that our Author here putteth of ſeveral grantees, if the Tenant Attorn to both of them, the Attornment is void, becauſe it is not according to the Grant. If a reverſion be granted for life, and after it is granted to the ſame Grantee for years and the leſſee attorneth to both Grants, it is void for the incertainty; A multo fortiori, if the Lord by one Deed grant his Seigniory to J. Biſhop of London and to his heirs, and by another Deed to J. Biſhop of London, and to his Succeſſors, and the Tenant attorn to both grants, the Attornment is void, for albeit the Grantee be but one, yet he hath ſeveral capacities, and the grants are ſeveral, and the Attornment is not according to either of the Grants.

But if A. grant the reverſion of black acre or White acre, and the leſſee attorn to the Grant, and after the Grantee maketh his election, the Attornment is good for albeit the ſtate was incertain, yet he attorned to the Grant in ſuch ſort, as it was made, and ſo note a diverſity between one grant and ſeveral grants, and obſerve in this caſe an Attornment good in expectation, and yet nothing paſſed at the time of the Attornment but by the election ſubſequent.

Sect. 553.

Temps.E.2.Attornment 43.E.3. 15.

HEre it is to be obſerved, that when a man maketh a feoffment of a Mannor, the ſervices do not paſs but remain in the Feoffor until the Free-holders do attorn, and when they do attorn the attornment ſhall have relation to ſome purpoſe and not other. For albeit the attornment be made many years after the feoffment, yet it ſhall have relation to make it paſs out of the Feoffor Ab initio even by the livery upon the feoffment, but not to charge the Tenants with any mean arrerages or for waſte in the mean time, or the like.

If a reverſion of land be granted to an alien by Deed, and before attornment the Alien is made Denizen, and then the attornment is made, the King upon office found ſhall have the land: for as to the eſtate between the parties it paſſeth by the Deed Ab initio.

Paſch.5.E.3. Coram Rege.Suſſex in Theſaur.
21.E.3 47.
34.E.3.Double plea. 24
42 Aſſ.p.6. 43.Aſſ.p.20.
30.E.3. 29.E.3.
26.E.3. Per quæ ſervicia 21.
8.H.4.1.b. 12.H.4.
20.H.6.7. 35.H.6.
9.E.4.33. 13.H.7.14.a.
1.H.7.31.
4.E.6. Attornment, B. 30.

If a man plead a feoffment of a Mannor he need not plead an attornment of the Tenants, but (if it be material) it muſt be denied or pleaded of the other ſide.

And upon conſideration had of all the books touching this point, whether the ſervices of the Free-holders do paſs, wherein there have been three ſeveral opinions, viz. ſome have holden that the ſervices do paſs in the right by the livery as parcel of the Mannor, but not to be bound without attornment as in the caſe of the Fine. And others have holden, that they both paſs in right and in poſſeſſion to diſtrein without attornment. And the third opinion is, that in this caſe the ſaid ſervices paſs neither in poſſeſſion nor in right, but until attornment remain

«ITem, ſi hom ſoit ſeiſie de un mannor, quel mannor eſt parcel en demeſne, & parcel en ſervice, ſil voile aliener cel mannor a un auter, il covient que per force del alienation, que touts les tenants que teignont del alienor come de ſon mannor, attornerent al alienée, ou auterment les ſervices demurront continualment en la lienor, forprise tenants a volunt, car il ne beſoigne que tenants a volunt atturnent ſur tiel alienation, &c.

ALſo if a man be ſeiſed of a mannor, which mannor is parcel in demeſn, and parcel in ſervice, if he will alien this mannor to another, it behoveth that by force of the alienation, all the Tenants which hold of the alienor as of his mannor do attorn to the alienee, or otherwiſe the ſervices remain continually in the alienor, ſaving the tenants at will, for it needeth not that tenants at will do attorn upon ſuch alienation, &c.

remain continually in the alienor as Littleton here holdeth. And so it was resolved, Pasch. 15. Eliz. between Brasbitch and Barwell according to the opinion of our Author. And I never yet knew any of Littletons cases (albeit I have known many of them) to be brought in question, but in the end the Judges concurred with our Author. Vid. Hill. 14. Eliz. Rot. 508. in Communi banco.

And where our author speaketh of the attornment of the Free-holders, if the Lord make a lease for years or for life of a Mannor, and the Free-holders attorn to the lessee, if after the reversion of the Mannor be granted, the attornment of the lessee for years or life shall bind the Free-holders, for by their former attornment, they have put the attornment into the mouth of the lessee. 9. E. 2. tit. Attornment 18. b. 19 E. 2. ibid. 10. 21. E. 3. 47. 5 H. 5. 12. b. Vid. Lit. Sect. 549. & 556.

¶ *Forsprise tenant a volunt, &c.* Here is implyed Tenant at will or by copy of Court Roll according to the custom of Mannor, so as the Free-hold and inheritance both of lands in the hands of Tenant at will by the Common Law, or by custom shall pass both in right and in possession without any attornment.

Sect. 554.

¶ Item, si soient sans tenant, & le tenant lessa la terre a un auter pur terme de vie, ou dona la terre en le taile sur le reversion a luy, &c. si le Seignior en tiel cas granta son seigniory a un auter, il covient que celuy en le reversion attorna al grauntee, et nemy le tenant a terme de vie, ou le tenant en le taile, pur ceo quem cest cas celuy en le reversion est tenant al Seignior, & nemy le tenant a terme de vie, ne le tenant en le taile.

ALSO if there be Lord and Tenant, and the Tenant letteth the Land to another for term of life, or giveth the land in tail saving the reversion to himself, &c. if the Lord in such case grant his Seigniory to another, it behoveth that he in the reversion attorn to the grantee, and not the Tenant for term of life, or the Tenant in tail, because that in this case he in the reversion is tenant to the Lord, and not the tenant for term of life, nor the tenant in tail.

¶ For it is a maxime in law that no man shall attorn to any grant of any Seigniory, Rent-service, Reversion or Remainder, but he that is immediately privy to the Grantor, and because in this case there is no privity between the lord and the tenant for life, or donee in tail, but only between the lord and him in the reversion, for in this case the attornment of him in the reversion only is good.

¶ *Savant le reversion a luy, &c.* That is to say, without limitation of any remainder over, and this is but to make his opinion plain, as to the point that he putteth it.

Sect. 555.

¶ En meine le maner est, lou sont Seigniour, meine et tenant, si le Seigniour, voile graunter les services del meine, coment que il ne fait ascun mention en son grant del meine, uncore il covient que le meine attorna, &c. et nemy le tenant

¶ IN the same manner is it where there are Lord, Mesne and Tenant, if the Lord will grant the services of the Mesne albeit he maketh no mention in his grant of the Mesne, yet the Mesne ought to attorn, &c. and not the Tenant peravail, &c.

pera-

perabail, &c. pur ceo q̄ le meſne eſt tenant a luy, &c. for that the Meſne is Tenant unto him, &c.

This ſtanderh upon the ſame reaſon that the next precedent caſe did.

Sect. 556.

¶ HEre is to be obſerved a diverſity between a Rent-ſervice and a Rent-charge, or a Rent-ſeck; for as to the Rent-ſervice, no man (as hath been ſaid) can Attorn, but he that is priviy, ſo in caſe of a Rent-charge it behoveth that the Tenant of the Free-hold doth Attorn to the Grantee, without reſpect of any priviry. And therefore the Diſſeiſor only in the caſe of a grant of a Rent-charge, ſhall attorn, becauſe he is (as Littleton ſaith) tenant of the Free-hold, but in caſe of a grant of a Rent-ſervice, the Attornment of the Diſſeiſee ſufficeth.

21.H.6.9.b

If there be Lord and Tenant by homage, fealty, and Rent, the Tenant is diſſeiſed, the Lord granteth the rent to another, the Diſſeiſee attorneth, this is void: but if he had granted over his whole Seigniory, the Attornment had been good, and the reaſon of this diverſity is here given by our Author, for that when the rent was granted only, it paſſed as a Rent-ſeck, and conſequently the diſſeiſor being Terre-Tenant, muſt attorn. But when the Seigniory is granted, then the diſſeiſee in reſpect of the priviry may Attorn.

¶ MEs auterīnt eſt, lou certaine terre eſt charge dun Rent charge, ou Rent ſeck, car en tiel caſe q̄ celuy que ad le Rent charge ceo grāt a un auter, il covient q̄ le tenant del franktenement atturna al Grantée, pur ceo que le franktenement eſt charge oue le rent, &c. et en Rent charge nul Avowry doit eſtre fait ſur alcun perſon pur le diſtreſſe priſe, &c. mes il avowera le priſe bone & droiturel, come en terres ou Tenements iſſint charges a ſon diſtreſs, &c.

BUT otherwiſe it is where certain land is charged with a Rent-charge, or Rent-ſeck, for in ſuch caſe if he which hath the rent-charge grant this to another, it behoveth that the Tenant of the free-hold attorn to the grantee, for that the free-hold is charged with the rent, &c. And in a Rent-charge no Avowry ought to be made upon any perſon for the diſtreſs taken, &c. but he ſhall avow the priſel to be good and rightful, as in lands or Tenements ſo charged with his diſtreſs, &c.

¶ *Covient que le Tenant del Franktenement, &c.* And therefore if the tenant of the land charged with a rent-charge or a Rent-ſeck, make a leaſe for life, and he that hath the rent-charge or rent-ſeck granteth it over, the Tenant for life ſhall attorn, for he is Tenant of the Free-hold, according to the expreſs ſaying of our Author, and (as hath been ſaid) there needeth no priviry.

And it was holden by Dyer chief Juſtice of the Court of Common Pleas, and Mounſon Juſtice, in the argument of Bracebridges caſe aboveſaid, and not denied, that if he that hath a rent-charge granteth it over for life, and the Tenant of the land Attorn thereunto, and after he granteth the reverſion of the rent-charge, that the Grantee for life may aottrn alone. And that theſe words of Littleton are to be underſtood when a rent-charge or rent-ſeck is granted in poſſeſſion: And therewith agreeth 46. E. 3. where it appeareth, That the Quid juris clamat

46.E.3.27.2.H.6.9. Vi Lit. Sect. 549. & 550.

in t at caſe, did lie againſt the Grantee for life.

A man maketh a leaſe for life, and after grants to A. a rent-charge out of the reverſion, A. granteth the rent over, he in the reverſion muſt attorn, and not the tenant of the free-hold, for that the Free-hold is not charged with the rent, for a releaſe made to him by the grantee doth not extinguiſh the rent. And Littleton is to be underſtood, that the tenant of the Free-

hold

hold must atturn when the Freehold is charged.

¶ *Et en Rent charge nul Avowrie doit eſte fait ſur aſcun perſon, &c.* This is the reaſon that Littleton giveth of the difference between the Rent ſervice and the Rent charge. Now it may be ſaid, That this reaſon is taken away by the Statute of 21.H.8. for by that Statute the Lord needs not avow for any rent or ſervice upon any perſon in certain, and then by Littletons reaſon there needeth no privity to the attornment of a ſeigniory, for (ſay they) Ceſſante cauſa vel ratione legis ceſſat lex. As at the Common Law no aid was grantable of a ſtranger to an Avowry: becauſe the Avowry was made of a certain perſon, but now the Avowry being made by the ſaid act of 21.H.8. upon no perſon; therefore the reaſon of the law being changed, the law it ſelf is alſo changed, and conſequently in an Avowry, according to that act, and ſhall be granted of any man, and the like in many other caſes, which caſe is granted to be good law: but albeit the Lord (as hath been ſaid) may take benefit of the Statute, yet may he avow ſtill at his election upon the perſon of his Tenant. Alſo albeit the manner of the Avowry be altered, yet the privity (which is the true cauſe of the ſaid difference) remaineth ſtill as to an Attornment. 21 H.8. cap. 19. Vid. Sect. 454. 27 H.8 4.b.

¶ *Rent charge, &c.* It is to be obſerved, to what kind of Inheritances being granted, an Attornment is requiſite. And in this Chapter Littleton ſpeaketh of five: Firſt, of a Seigniory, Rent ſervice, &c. Secondly, of a Rent charge. Thirdly, of a Rent ſecke. And hereafter in this Chapter of two more, viz. of a reverſion and remainder of lands; for the Tenant ſhall never need to attorn but where there is Tenure, attendance, remainder, or payment of a Rent out of land. And therefore if an Annuity, Common of paſture, Common of eſtovers, or the like, be granted for life or years, &c. the reverſion may be granted without any attornment, and albeit ſometimes in ſome of theſe caſes or the like, an Attornment be pleaded, yet it is ſurpluſage, and more than needeth, becauſe in none of them there is any Tenure, Attendance, Remainder, or payment out of land. 21. H. 7. 1. 1. H. 5 1. 37. Aſſ. 14. 36. Aſſ pl. 3. 31. H. 8 tit. Attornment fol. 59.

Sect. 557.

¶ Item, ſi ſoit Seignior et tenant, et le tenant leſſa ſon tenement a un auter p̄ tẽme d'vie, le remainder a un auter en fee, et puis le Seignior granta les ſervices a un auter, &c. et le teſnt a terme de vie attorna, ceo eſt aſſes bone, pur ceo que le Tenant a terme de vie eſt tenaunt en ceſt caſe al ſeignior, &c. et celuy en le remainder ne poit eſtre dit teſnt al ſeignior, q̄nt a cel entẽt ſoſque aps la mort le tenant a tẽme de vie, uncore en ceſt caſe ſi celuy en le remainder mourust ſans hẽ, le ſeignior avera le remainder p̄ voy deſcheate, pur ceo que coment que le ſeignior en tiel cas covient lavower ſur le tenant a terme de vie, &c. uncore tout lentier tenement quant a touts les eſtates de franktenement, ou d'fee ſimpl' ou auterment, &c. en tiel cas ſont enſemble tenus d' le ſeignior, &c.

ALſo if there be Lord and Tenant, & the tenant letteth his tenement to another for term of life, the remainder to another in fee, and after the Lord grant the ſervices to another, &c. and the Tenant for life attorn, this is good enough, for that the Tenant for life is Tenant in this caſe to the Lord, &c. and he in the remainder cannot be ſaid to be tenant to the Lord, as to this intent, until after the death of the tenant for life; yet in this caſe if he in the remainder dieth without heir, the Lord ſhall have the remainder by way of Eſcheat, becauſe that albeit the Lord in ſuch caſe ought to avow upon the tenant for life, &c. yet the whole entire Tenement, as to all the eſtates of the Freehold or of Fee ſimple, or otherwiſe, &c. in ſuch caſe are together holden of the Lord, &c.

¶ Yes

¶ * Mes nemy de faire Avowry ſur eux touts enſemble. M.3.H.6.

¶ * But not to make Avowry upon them all together. *M.*3.*H.*6.

15.E.3.Attorn. 10.12. *E.*4.4. 18.H.6.2. 9.E.2.tit.Attorn. 18.18. E.4.7. Temps *E.*1. Attorn.22. Vide Sect. 580.

¶ *ET le Tenant a terme de vie attorna, &c.* For he that is (as hath been ſaid) privy and immediately Tenant to the Lord muſt attorn: and that is in this caſe, The Tenant for life, and ſo of the other five if a ſeigniory is granted to one for life, the remainder to another in fee, the Attornment to the Tenant for life is an Attornment to the remainder alſo, unleſs it be that they in the remainder ought to have acquital, or other privilege, (whereof they ſhould be prejudiced) and then albeit an attornment be had to the Tenant for life, and he acknowledge the acquital &c. yet after his deceaſe he in remainder ſhall not diſtrein until he acknowledge the acquital, notwithſtanding the attornment of the Tenant for life.

¶ *Avera le remainder per voy deſcheat.* For the remainder is holden of the Lord, but not immediately holden, and in this caſe by the eſcheat of the remainder the ſeigniory is extinct, for the Fee ſimple of the Seigniory being extinct, there cannot remain a particular eſtate for life thereof, in reſpect of the Tenure and attendance ober, and of this opinion is Littleton (a) himſelf in our Books. But otherwiſe it is of a Rent-charge in fee, for if that be granted for life, and after he in the reverſion purchaſe the land, ſo as the reverſion of the rent-charge is extinct, yet the grantee for life ſhall enjoy the rent during his life, for there is no tenure or attendance in this caſe.

3.H.61. Old Tenures 107 (a) 15.E.4. 13. a.

M.3.H.6.1. ¶ * *Mes nemy de faire Avowry, &c.* This is added to Littleton, but it is conſonant to Law, and the authority truly cited.

Sect. 558.

¶ ITem, ſi ſoit Seignior & tenant, & le tenant leſſa les tenements a un feme pur terme de vie, le remainder ouſter en fee, & la feme prent baron, & puis le ſeignior granta les ſervices, &c. a le baron & ſes heires, en ceſt caſe le ſervice eſt mis en ſuſpence durant le coverture. Mes ſi la feme devie vivant le Baron, le baron & ſes heires averont le Rent de ceux en le remainder, &c. & en ceo caſe il ne beſoigne aſcun Attornement per parol, &c. pur ceo que le baron que doit Attorn acrepta le fait del graunt de les ſervices, &c. le quel acceptance eſt un Attornement en la Ley.

ALſo if there be Lord and Tenant, and the Tenant letteth the tenements to a woman for life, the remainder over in fee, and the woman taketh husband, and after the Lord grant the ſervices, &c. to the husband and his heirs, in this caſe the ſervice is put in ſuſpence during the Coverture: but if the wife die living the husband, the Husband and his heirs ſhall have the Rent of them in the remainder, &c. And in this caſe there needeth no Attornment by parol, &c. for that the husband which ought to Attorn, accepted the deed of grant of the ſervices, &c. the which acceptance is an attornment in Law.

3.E.3.42. 15.E.3. Attornement 11.

¶ *LE quel acceptance eſt un attornement en la Ley, &c.* Littleton having ſpoken (as hath been ſaid) of Attornments in Deed or expreſs, now cometh to ſpeak of Attornments in law, or implyed, and having before ſet down five expreſs attornments in Deed, doth in this Chapter enumerate ſeven attornments in Law. Here it is to be underſtood, That the expreſs attornment of the Husband will bind the wife after the coverture,

coverture, and in as much as this acceptance of the grant is an attornment in law without a word of attornment the Seigniory shall pass. And this is the first example that Littleton putteth of an attornment in law, which amounteth to an express attornment, for that it is an agreement to the grant. 42.E.3.tit.Fines 37. 12.E.4.4.

If the Lord grant his Seigniory to the Tenant of the land, and to a stranger, and the Tenant accept the Deed, this acceptance is a good attornment to extinguish the one moity, and to vest the other moity in the Grantee, as hath been said.

Sect. 552.

¶ En mᵐ le manner est, ſi ſoyent Seignior & tenant, & le tenant prent feme, & puis le Seignior granta les ſervices a la feme & les heirs, & le baron accepta le fait, en ceſt cas apres la mort le baron, la feme & ſes hᵉres averont les ſervices, &c. car per le acceptance del fait per l' baron, ceo eſt bone Attornment, &c. coment que durant la coverture les ſervices ſont mis en ſuſpence, &c.

¶ IN the ſame manner is it, if there be Lord and tenant, and the Tenant taketh Wife, and after the Lord grant his ſervices to the wife and his heirs, and the husband accepteth the Deed. In this caſe after the death of the husband the wife and her heirs ſhall have the ſervices, &c. for by the acceptance of the deed by the husband, this is a good Attornment, &c. albeit during the coverture the ſervices ſhall be put in ſuſpence, &c.

¶ HEre is the ſecond example that Littleton putteth of an attornment in Law, and ſtandeth upon the former reaſon.

¶ *Sont miſe en ſuſpence.* Suſpence cometh of ſuſpendeo, and in Legal underſtanding is taken when a Seigniory, Rent, Profit apprender, &c. by reaſon of unity of poſſeſſion of the Seigniory, Rent, &c. and of the land out of which they iſſue are not in eſſe for a time, & tunc dormiunt, but may be revived or awaked. And they are ſaid to be extinguiſhed when they be gone for ever, & tunc moriuntur, and can never be revived, that is, when one man hath as high and perdurable an eſtate in the one as in the other.

Sect. 560.

¶ ITem, ſi ſoyent Seignior et tenant, & l' tenãt granta les tenements a un home pur terme d' ſa vie, le remainder a un auter en fee, ſi le Seignior granta l' ſervices a le tenant a terme de vie en fee, en ceſt cas le tenant a

ALſo if there be Lord and Tenant, and the Tenant grant the tenements to a man for term of his life, the remainder to another in fee, if the Lord grant the ſervices to the Tenant for life in fee, in this caſe the tenant for term of life

¶ HEre is the third caſe that Littleton putteth of an Attornment in Law. And it is to be obſerved, that albeit a grant as hath been ſaid, may enure by way of releaſe, and a releaſe to the Tenant for life doth work an abſolute extinguiſhment, whereof he in the remainder ſhall take benefit, yet the Law ſhall never make any conſtruction againſt the purport of the grant to the prejudice of any, or againſt the meaning of the parties as

here

here it should, for if by construction it should enure to a release, the heirs of the tenant for life should be disherited of the rent, and therefore Littleton here saith, that the heirs of the Grantee shall have the Seigniory after his death. And here is an attornment in Law to a grant suspended that cannot take effect in the Grantee so long as he liveth, but shall take effect in his heirs by descent for the Inheritance of the Seigniory was in the Tenant for life, and the suspension only during his life.

terme de vie ad ſe en les ſervices. Mes les ſervices ſont mis en ſuſpence durant la vie. Mes les hēirs le tenant a terme de vie averont les ſervices apres ſ̄ decease, &c. Et en ceſt cas il ne beloigne attornement, car per lacceptance del fait ō celuy, q̄ doit attourner, &c. eſt ceo attournement de luy meſme.

hath a fee in the ſervices; but the ſervices are put in ſuſpence during his life. But the Heirs of the Tenant for life ſhall have the ſervices after his deceaſe, &c. And in this caſe there needeth no Attornment, for by the acceptance of the Deed by him which ought to attorn, &c. this is an attornment of it ſelf.

Sect. 561.

¶ Mes lou le tenant ad cy grand & haut eſtate en l'ſ tenements, ſicome le Seignior ad en le Seigniory, en tiel caſe, ſi le Seignior graunta les ſervices al tenant en fee, ceo urera per voy dextinguiſhment, cauſa patet.

But where the Tenant hath as great and as high eſtate in the tenements, as the Lord hath in the Seigniory, in ſuch caſe if the Lord grant the ſervices to the Tenant in fee, this ſhall enure by way of extinguiſhment, *Cauſa patet.*

¶ Here Littleton intendeth not only as great and high an Eſtate, but as perdurable alſo, as hath been ſaid, for a Diſſeiſor or Tenant in fee upon condition hath as high and great an Eſtate, but not ſo perdurable an Eſtate, as ſhall make an extinguiſhment.

Sect. 562.

¶ Here in this caſe he in the Reverſion of the tenancy muſt attorn, becauſe he is the Tenant to the Lord, and yet the Seigniory ſhall be ſuſpended during the life of the Grantee, becauſe he hath an eſtate for life in the tenancy, but his heirs ſhall enjoy the Seigniory by Diſcent.

¶ *Uncore il ne*

¶ Item, ſi ſoyent Seignior & tenant, & le tenant fait un leas a un home pur terme de ſa vie, ſabant le reverſion a luy ſi le Seignior granta le Seigniory a le tenant a terme de vie en fee, en ceſt caſe il cobi-

Alſo if there be Lord and Tenant, and the Tenant maketh a leaſe to a man for term of his life, ſaving the reverſion to himſelf if the lord grant the ſeigniory to tenant for life in fee: in this caſe it behoveth that he in the rever-

ent

ent que celuy en le reuersion attorna al tenant a terme de vie per force d̄ cel grant, ou autrement le grāt est voide, pur ceo que celuy en le reuersion est tenāt al Sñr, &c.

¶ * Et uncore il ne tiendra del tenant a terme de vie, durant la vie. Causa patet. * ¶

sion must attorn to the tenant for life by force of this grant, or otherwise the grant is void, for that he in the reversion is tenant to the Lord, &c.

* ¶ Yet he shall not hold of the tenant for life during his life. *Causa patet, &c.*

tient, &c. This is added and not in the original, and is against law, and therefore to be rejected.

¶ *Tenant al Seignior, &c.* Here is to be understood a diversity when the whole estate in the Seigniory is suspended, and when but part of the estate in the Seigniory is suspended. And in this case the Seigniory is suspended but for term of life, (a) & therefore as to all things concerning the right it hath his being, but as to the possession during the particular estate the Grantee shall take

(a) 34. Ass. p. 15.

no benefit of it, therefore during that time he shall have no rent, service, wardship, release, harriot, or the like, because these belong to the possession, but if the tenant dieth without heir, the tenancy shall escheat unto the Grantee, for that is in the right, and yet when the Seigniory is revived by the death of the tenant, there shall be wardship, as if the tenant marry with the Seigniories and dieth, his heir within age, the wife shall have the wardship of the heir. Also in the case that Littleton here putteth, albeit the Seigniory be suspended but for life, yet some hold that he cannot grant it over because the grantee took it suspended, and it was neder In esse in him, but if the tenant make a lease for years or for life to the lord, there the lord may grant it over because the Seigniory was In esse in him, and the fee simple of the Seigniory is not suspended, but if the lord disseise the Tenant, or the tenant enfeoffe the lord upon condition, there the whole estate in the Seigniory is suspended, and therefore he cannot during the suspension take benefit of any Escheat, or grant over his Seigniory.

16. E. 3. tit. Voucher 83.

5. E. 3. Twougs case.

Sect. 563.

¶ Item, si soient seignior et tenant, et le tenāt tient del Seignior per xx. maners des services, et le Seignior granta son seigniory a un auter, si le tenant paya en fait ascun parcel dascun de les services al grauntee, ceo est bone attornment, de et pur touts les services, comẽt que lentent de le teñ fuit attourner forsque de cel parcel, pur ceo que le seigniory est entier, coment que ils sont di-

ALso if there be Lord and tenant, and the tenant holdeth of the Lord by xx. manner of services, and the Lord grant his Seigniory to another, if the tenant pay in Deed any parcel of any of the services to the Grantee, this is a good Attornment, of and for all the services, albeit the intent of the tenant was to attorn but for this parcel, for that the Seigniory is intire, although there be divers man-

¶ HEre it appeareth that an attornment being made for parcel, is good for the whole, for seeing he hath attorned for part, it cannot be void for that, and good it cannot be unless it be for the whole: but of this sufficient hath been said before in this Chapter.

4. E. 3. 35. Malmans case. 29. E. 3. 23. 5. E. 4. 2. 22. Ass. 66. 7 H. 1. 10. 35. H. 6. 8. Per Prisott.

¶ *Paya aſcun parcel des ſervices.* Here is the fourth example of an Attornment in Law, for payment of any parcel of the services is an agreement in law to the grant.

40. E. 3. 34.

¶ *Coment que lentent del tenant fuit dattorner, &c.*

Quia intentio inſervire debet legibus, non leges intentioni. And yet as far as it may ſtand with the rule of Law, it is honourable for all Judges to judge according to the intention of the parties, and ſo they ought to do. And of this ſomewhat in this Chapter hath been ſaid before.

20. H. 6.

Sect. 564.

¶ HEre is to be obſerved that this judgment in the Scire facias (which is no more but that the Demandant ſhall have execution, &c.) is a good attornment, albeit it is preſumed that Judicium redditur in invitum, and that an attornment in Law of any part is good for the whole. And this is the fifth example that Littleton putteth of an attornment in law.

Note that in caſe of a Deed nothing paſſeth before attornment as hath been ſaid; In the caſe of the Fine, the thing granted paſſeth as to the ſtate, but not to diſtrain, &c. without attornment. In the caſe of the King the thing granted doth paſs both in eſtate and in privity to diſtrain, &c. without attornment, unleſs it be of lands or tenements that are parcel of the Dutchy of Lancaſter, and lie out of the County Palatine.

43. E 3. 24. 3. E. 3. Quod juris clamat. 4. E 3 28. 29. 37. H. 6. 14. per Moyl. 17. E. 3. 29.

¶ Item, ſi ſoit Seignior et tenant, et le tenant tient del Sñr per pluſors maners des ſerbices, et l'Sñr granta les ſerbices a un auter per fine, ſi le grantee ſua un Scire facias hors del meſme le fine pur alcun parcel de les ſerbices, et ad judgement de recober, cel judgement eſt bone attornement en ley, pur touts les ſerbices.

ALſo if there be Lord and tenant, and the tenant holdeth of the Lord by many kind of ſervices, and the Lord grant the ſervices to another by fine, if the Grantee ſue a *Scire facias* out of the ſame fine for any parcel of the ſervices, and hath judgment to recover, this judgment is a good attornment in law for all the ſervices.

Sect. 565.

¶ Item, ſi le Seignior dun rent ſerbice graunta les ſerbices a un auter, et le tenant attorna per un denier, et puis le grantee diſtraine pur le rent arere, et le tenant a luy fait reſcous, en ceo cas le grauntee nabera aſsiſe del rent, forſque briefe de reſcous, pur ceo que le don del denier per le tenant, ne fuit forſque per boy dattornement, &c. Mes ſi le tenant avoit done a le grauntee le dit denier, come parcel de le rent, ou un maile, ou un farthing per boy de

ALſo if the Lord of a Rent ſervice grant the ſervices to another, and the tenant attorn by a penny, and after the Grantee diſtrain for the rent behind, and the tenant make reſcous. In this caſe the grantee ſhall not have an Aſſiſe for the rent, but a writ of reſcous, becauſe the giving of the penny by the tenant was not but by way of attornment, &c. but if the tenant had given to the grantee the ſaid penny as parcel of the rent, or a half penny or a farthing by way of ſeiſin of the rent, then this

ſeiſin

ſeiſin del rent, donque ceo eſt bone attornement, et auxy eſt bon ſeiſin al grauntee del rent, et donqz ſur tiel reſcous le grantee avera aſſiſe, &c.

is a good attornment, and alſo it is a good ſeiſin to the Grantee of the rent, and then upon ſuch reſcous the Grantee ſhall have an aſſiſe, &c.

HEreupon is to be obſerved a diverſity between money given by way of attornment, and where it is given as parcel of the rent by way of ſeiſin of the rent. For albeit the rent be not due before the day, yet a payment of parcel of the rent beforehand is an actual ſeiſin of the rent to have an aſſiſe. And ſo it is if he give an ore, a horſe, a ſheep, a knife, or any other valuable thing in name of ſeiſin of the rent beforehand, this is good. And therefore a payment in name of ſeiſin is more beneficial for the grantee, becauſe that is both an actual ſeiſin and an attornment in law, and yet being given before the day in which the rent is due, it ſhall not be abated out of the rent. So, as to give ſeiſin of the rent, it is taken for part of the rent, but as to the payment of the rent, it is accounted as no part of the rent. The reaſon of the diverſity is, for that remedies to come to rights or duties are ever taken favourably. Here alſo appeareth that there is an actual ſeiſin, or a ſeiſin indeed of a rent, whereof (as Littleton here ſpeaketh) an aſſiſe doth lie, and a ſeiſin in law which the Grantee hath by attornment before actual poſſeſſion.

39.H.6.3.26.5.E.4.2. Vide Sect. 235. 25 E.3.44.49.E.3.15. 37.H.6.39.49.Aſſ.p.6 34.H.6.42. 15 E.3.Execution 62. 40.E.3.22.28.H.6.6.b. 7.H 4.2.tit.Attorney Br. 97.

Sect. 566.

¶ Item, ſi ſont p'uſors Jointenãts que teignont p certaine ſervices, & le Seignior graunta a un auter les ſerbices, et un d' les Jointenants attorna al grauntee, ceo eſt auxy bon, ſicõe touts vſent attorne, pur ceo que le ſeignior eſt entier, &c.

ALſo if there be many Jointenants which hold by certain ſervices, and the Lord grant to another the ſervices, and one of the Jointenants attorn to the grantee, this is as good as if all had attorned, for that the ſeigniory is entire, &c.

¶ HEre is to be obſerved what manner of Tenants ſhall attorn to the Grant. And firſt (b) if there be two or more Joyntenants, and one of them attorn, it is ſufficient: for as it hath been often ſaid, there cannot be an attornment in part. And albeit there is great authority againſt Littleton, yet the law hath been adjudged according to Littletons opinion, as it hath been in other of his caſes when they have come in queſtion, and as it is of an attornment, ſo it is of a ſeiſin, a ſeiſin of a rent by the hands of one Joyntenant is good for all, and a ſeiſin of part of the rent is a good ſeiſin of the whole.

(b) 39 H.6.3.26. See Tookers caſe ubi ſupra, and the Authorities there cited.

(c) If either the Grantor or the Grantee die, the attornment is countermanded, but if the tenant die, he that hath his eſtate may attorn at any time. If the tenant grant over his eſtate, his aſſignee may attorn.

(c) Vid. lib. 4. fol. 8. li 6. fol. 57. lib 9 fol 34. Vid 4 H.6.29.18.E.4.10

(d) If an infant hath lands by purchaſe or by diſcent, he ſhall be compelled to attorn in a Per quæ ſervitia, and no miſchief to the infant, for when he cometh to full age he may diſclaim to hold of him, or he may ſay that he hold by leſſer ſervices, but there ſhould be a greater miſchief for the Lord if the attornment of an infant ſhould not be good, for he ſhould loſe his ſervices in the mean time.

(d) 42.E.3.Age 33. 26.E. 62.27.H.8.tit. Attorn Br.26.E.3.62. 26.Aſſ.27.32.E 3. tit.per quæ ſervic.9. 2 E.2.Attorn.78.

If an Infant be a leſſee, he ſhall be compelled to attorn in a Quid juris clamat. The attornment of an infant to a grant by Deed is good, and ſhall bind him, becauſe it is a lawful act, albeit he be not upon that grant by Deed compellable to attorn. Dr Baron and Fem Littleton putteth many caſes in this Chapter.

2 E.2.ibid 77 18.H.6.2 Lib.9 f 84 85 Conyes caſe, 4.Mar. Dier.1,7. 21.E.3.Age 85. 7.E 2.Age 120.

(e) A man that is deaf and dumb, and yet hath underſtanding, may attorn by ſigns: (f) but one that is not Compos mentis cannot attorn, for that he that hath no underſtanding cannot agree to the grant.

(e) 26.E.3.63. (f) 18 E.3.53.

What conveyances ſhall be good without attornments more ſhall be ſaid in this Chapter in his proper place.

Sect.

Sect. 567.

¶ Item, ſi home leſſa tenements a terme dans, per force de quel leaſe le Leſſee eſt ſeiſie, et puis le Leſſor per ſon fait granta le reverſion a auter pur terme de vie, ou en taile, ou en fee, il covient en tiel caſe que le Tenãt a terme dans attorna, ou autrement rien paſſera a tiel grantee per tiel fait. Et ſi en ceſt caſe l'tenant a terme dans attorna al Grantee, donque maintenant paſſera le Franktenement al Grauntee per tiel atturnement ſauns aſcun livery de ſeiſin, &c. pur ceo que ſi aſcun livery d' ſeiſin, &c. ſerra ou beſoigne deſtre fait en cel caſe, donque le tenant a terme dans ſerroit al temps de liverie de ſeiſin ouſte de ſon poſſeſſion, le quel ſerroit encounter reaſon, &c.

ALſo if a man letteth tenements for term of years, by force of which Leaſe the Leſſee is ſeiſed, and after the Leſſor by his Deed grant the reverſion to another for term of life, or in Tail, or in Fee, it behoveth in ſuch caſe that the Tenant for years attorn, or otherwiſe nothing ſhall paſs to ſuch grantee by ſuch deed. And if in this caſe the Tenant for years attorn to the Grantee, then the Freehold ſhall preſently paſs to the Grantee by ſuch attornment without any livery of ſeiſin, &c. becauſe if any livery of ſeiſin, &c. ſhould be or were needful to be made, then the Tenant for years ſhould be at the time of the livery of ſeiſin ouſted of his poſſeſſion, which ſhould be againſt reaſon, &c.

¶ HEre Littleton having ſpoken of Grants of Seigniories and Rent charges, and Rents ſecke iſſuing out of land, here treateth of a Grant of a reverſion of land upon an eſtate for years, ſeeing this grant of the reverſion muſt be by Deed, and the agreement of the leſſee for years requiſite thereunto, the Freehold and Inheritance do paſs thereby, as well as by livery of ſeiſin, if it were in poſſeſſion: and the grant of the reverſion by Deed with the attornment of the leſſee, do counterbail in law a Feoffment by livery, as to the paſſing of the Freehold and Inheritance.

¶ *A terme dans.* (g) And yet a Tenant by Statute Merchant, or Tenant by Statute Staple, or by Elegit, muſt alſo attorn, for the Grantee may have a Venire facias ad computandum, or tender the money, &c. and diſcharge the land, and if the reverſion be granted by fine, they ſhall be compelled to attorn in a Quid juris clamat.

(g) 6. E. 53. 25. E 3. 53. Brook. Tit. Attorn. 48. 32. E. 3. Scir. fac. 101. Dy. 1. a.

And ſo the Executors that have the land until the debts be paid muſt attorn upon the grant of the reverſion, although they have not any certain term for years.

Sect. 568.

¶ HEre Littleton ſpeaketh of a Reverſion expectant upon an eſtate for life, or a gift in tail.

¶ *Il covient que le Tenaunt de la Terre at-*

¶ Item, ſi Tenements ſoient leſſes a un home pur terme de vie, ou done en le taile ſabãt

ALſo if Tenements be letten to a man for term of life, or given in Tail, ſaving the reverſion, &c. if he in le

le reuersion, &c. ſi celuy en Reuersion en tiel caſe granta le Reuersion a un auter per ſon fait, il conuient que le Tenaunt de la Terre attourna al Grantee en la vie le Grantor, ou autrement, le Graunt eſt void.

the reuerſion in ſuch caſe grant the reuerſion to another by his Deed, it behoueth that the Tenant of the Land attorn to the Grantee in the life of the Grantor, or otherwiſe the Grant is void.

torne al Grauntee, &c.

Let us therefore ſpeak firſt of Tenant for life: and yet in ſome caſe albeit Tenant for life hath granted over his Eſtate, yet he ſhall attorn, as if Tenant in Dower or by the curteſie, grant over his or her eſtate, and the heir grant over the reuerſion, the Tenant in Dower or by the Curteſie may attorn, becauſe at the time of the grant made they were attendant to the heir in reuerſion, and the Grantee

(a) 10.H.4.tit. Attorn. 26. 11.H.4.18. 30.E.3.16. 38.E.3.23.18.E.3.3.10.E.3. Quid juris clam. 41. 41.E.3.18. Temps. E. 1. tit. Waſte. 122.

F.N.B.55.E. Regiſt.f.71. 4.E.3.26.

cannot be Tenant in Dower, or Tenant by the Curteſie. And if the reuerſion be granted by Fine, the Fine muſt ſuppoſe that the Tenant in Dower or by the Curteſie, did hold the land, albeit they had formerly granted over their eſtate, and albeit the reuerſion doth paſs by the Fine, yet the Quid juris clamat muſt be brought againſt him that was Tenant at the time of the note levied. But yet after the reuerſion is granted over, the Grantee ſhall not have any action of Waſte againſt the Tenant in Dower or by the Curteſie, but the action of waſte muſt be brought againſt their Aſſignee, and not againſt themſelves, for Tenant by the Curteſie or Tenant in Dower cannot hold of any but of the heir: and therefore in reſpect of the priuity, they ſhall attorn and be ſubject to an action of Waſte, as long as the reuerſion remaineth in the heir, albeit they have granted over their whole eſtate. And it is worthy of the obſervation, that if the grantee of the reuerſion doth bring an action of waſte againſt the aſſignee of the tenant by the curteſie, (b) the pl. muſt rehearſe the ſtat. which proveth that no prohibition of waſte in that caſe lay at the common law, as it did if the heir had brought it againſt the tenant by the courteſie himſelf: and therefore ſome do hold, That if the heir do grant over the reuerſion, that the attornment of the Aſſignee of the tenant by the Curteſie, or of tenant in dower is ſufficient, becauſe they afterward muſt be attendant and ſubject to the action of waſte.

(b) Regiſt.72.

If the reuerſion of leſſee for life be granted, and leſſee for life aſſign over his eſtate, the leſſee cannot attorn, but the attornment of the aſſignee is good, becauſe (as Littleton here ſaith) it behoueth that the Tenant of the Land do attorn, and after the aſſignment there is no tenure or attendance, &c. between the leſſee and him in reuerſion.

18.E.4.10.b. 26.E.3.62.

If leſſee for life aſſigneth over his eſtate upon condition, he having nothing in him but a Condition ſhall not attorn, but the Aſſignee may attorn becauſe he is Tenant of the land.

5.H.5.10.

Sect. 569.

EN meſm l' maner eſt, ſi terre ſoit done en taile, ou leſſe a un hõe p̃ terme de vie, le remainder a un auꝰ en fee, ſi celuy en le remainder voile granter ceſt remaind a un auter, &c. ſi le tenant de la terr̃ attourne en la vie le Grantor, donques le grant de tiel reñ eſt bon, ou autrement nemy.

IN the ſame manner is it, if land be granted in tail, or lett to a man for term of life, the remainder to another in fee, if he in the remainder will grant this remainder to another, &c. if the tenant of the land attorn in the life of the grantor, then the grant of ſuch a remainder is good, or otherwiſe not.

LIttleton alſo ſpeaketh here of an Attornment by Tenant in Tail, and true it is that he may attorn, but where the reuerſion is granted by fine, he is not compellable to attorn, becauſe he hath an eſtate of inheritance which may continue for ever. And ſo it is of a tenant in tail after poſſibility of iſſue extinct, he ſhall not be compelled to attorn for the Inheritance which was once in him. (c) But if Tenant in tail after poſſibility of Iſſue extinct grant over his Eſtate, his aſſignee ſhall be compelled to attorn, becauſe he never had but a bare eſtate for life

12.E.4.3.4. 3.E.4.11. 43 E.3.1. 46.E.3.13.

5.H.5.

20.E.3. Quid juris clam. 30.

(c) See the Chap. of Tenant in tail after poſſibility of Iſſue extinct. And Ewins caſe there cited to be adjudged.

But

But as to Tenant in Tail note a diverſity between a Quid juris clamat, and a Quem redditum reddit, or a Per quæ ſervitia; for againſt a Tenant in Tail, no Quid juris clamat lieth, as is aforeſaid. But if a man make a gift in tail, the remainder in fee, and the Seigniory or rent charge iſſuing out of the land be granted by Fine, the Conuſee ſhall maintain a Per quæ ſervitia, or a Quem redditum, and compel him to attorn. for herein his eſtate of Inheritance is no priviledge to him, for that a Tenant in Fee ſimple (as his eſtate was at the common law) is alſo compellable in theſe caſes to attorn.

Sect. 570.

¶ * P. 12. E. 4. Et la eſt tenus per tout le Court, que Tenant en Taile ne ſerra ars datturner, mes ſil atturna gratis, ceſt aſſets bone. *

P. 12. *Edw.* 4. It is there holden by the whole Court, that Tenant in Tail ſhall not be compelled to Attorn, but if he will attorn *gratis*, it is good enough.

12. E. 4. 3. 4. ¶ This is added to Littleton, and therefore though it be good Law, and the Book truly cited, yet I paſs it over.

Sect. 571.

¶ Item, ſi terre ſoit leſſe a un home pur terme dans le remainder a un auter p̃ terme de vie, reſerbant al Leſſour un certaine Rent per an, & liberie de ſeiſin ſur ceo eſt fait al tenant p̃ terme dans, ſi teſtuy en le Reverſion en ceſt caſe granta le Reverſion a un auter, &c. et le tenant que eſt en le remainder apres le terme dans ſoy attourna, ceo eſt bone Attournement, & celuy a que ceſt Reverſion eſt graunt per force de tiel Attournement diſtreyneta le Tenant a terme dans pur le Rent due apres tiel Attornement, coment que le teſtt a terme dans ne unques attournaſt a luy. Et la cauſe eſt, p̃ ceque lou le reũſion eſt dependant ſur leſtate del franktenement, ſuffiſt que le f del franktenement attournaſt tiel Grant del Reverſion, &c.

ALſo if Land be lett to a man for years, the remainder to another for life, reſerving to the leſſor a certain rent by the year, and Livery of Seiſin upon this is made to the Tenant for years, if he in the Reverſion in this caſe grant the Reverſion to another, &c. and the Tenant which is in the Remainder after the term of years Attorn, this is a good Attornment, and he to whom this Reverſion is granted, by force of ſuch Attornment ſhall diſtrein the tenant for years of the Rent due after ſuch attornment, albeit that the Tenant for years did never attorn unto him. And the cauſe is, for that where the Reverſion is depending upon an eſtate of free-hold it ſufficeth that the Tenant of the Free-hold do attorn upon ſuch a Grant of the reverſion, &c.

¶ S*uffiſt que le Tenant del Franktenement attorna.* Note, Littleton ſaith not here, That the Tenant of the Franktenement ought in this caſe to attorn, but that it

it ſufficeth that he doth attorne. And I heard Sir James Dier Chief Iuſtice of the Common Pleas hold, that in this caſe if the Tenant for years did attorne, it would veſt the reuerſion, for ſeeing the eſtate for years is able to ſupport the eſtate for life, he ſhall binde him in the remainder by his Attornment in reſpect of his eſtate and priuity. Paſch. 15. Eliz. in Braſbritches caſe in Communi Banco.

Sect. 572.

CEt eſt aſcauoir, que lou vn leas a terme dans, ou a terme de vie ou done en taile eſt fait a aſcun home, reſeruant a tiel leſſor, ou donor vn certaine rent, &c. ſi tiel leſſor, ou donor, graunta ſon reuerſion a vn auter, & le tenant del terre attourna, le rent paſſa al grauntee, coment q̄ en le fait del grant de reuerſion nul mention ſoit fait de le rent, pur ceo que le rent eſt incident al reuerſion en tiel caſe, & nemy è conuerſo, &c. Car ſi home voile graunter le rent en tiel caſe a vn auter, reſeruant a luy le reuerſion del terre, coment que le tenant attorna a le grauntee, ceo ſerra forſque vn rent ſecke, &c.

AND it is to be underſtood, that where a leaſe for years or for life, or a gift in taile is made to any man reſeruing to ſuch Leſſor or Donor a certaine rent, &c. if ſuch Leſſor or Donor grant his Reuerſion to another, & the tenant of the land attorne, the rent paſſeth to the Grantee, although that in the deed of the grant of the Reuerſion no mention be made of the rent, for that the rent is incident to the Reuerſion in ſuch caſe, and not *è conuerſo, &c.* For if a man will grant the rent in ſuch caſe to another, reſeruing to him the Reuerſion of the Land, albeit the Tenant attorne to the Grantee, this ſhall bee but a Rent ſecke, &c.

Of this Littleton hath ſpoken before in the Chapter of Rents.

Sect. 573.

CItem, ſi hõe leſſa terre a vn auter p̄ term̄ d̄ ſa vie & puis il confirma p̄ ſon fait leſtate d̄ tenant a term̄ d̄ vie, le remainder a vn auter en fee, & l'tenant a terme d̄ vie accepta le fait, donques eſt le remainder en fait en celuy a que le remainder eſt done ou limitte per meſme le fait, car per lacceptance del tenant a term̄ de vie de le fait, ceo eſt vn agreement de luy, & iſſint vn attornement en ley. Mes donore celuy en le remainder nauera aſcun action

ALſo, if a man let land to another for his life, and after hee confirme by his Deed the eſtate of the Tenant for life, the remaynder to another in fee, and the Tenant for life accepteth the Deed, then is the remainder in fait in him to whom the remainder is given or limited by the ſame Deed. For by the acceptance of the Tenant for life of the deed, this is an agreement of him, and ſo an Attornement in Law. But yet hee in the remaynder ſhall not haue any acti-

tion de waſte ne auter benefit per tiel remainder, ſi non que il auoit le dit fait en poigne, per que l' remainder fuit taile ou graunt a luy. Et pur ceo que en tiel cas le tenant a term̃ de vie voile touts reteigner le fait a luy, a cel entent que celuy en le remainder nauer-oit aſcun action d̃ waſte envers luy, pur ceo que il ne poit bener dauer le fait ē ſa poſſeſſion, il ſer-a bone & ſure choſe en tiel cas pur celuy en le remainder, que vn fait endent ſoit fait per celuy que voile faire tiel confirmation, & le remaynder ouſter, &c. & que celuy que fait tiel confirmation deliuera vn part del Indenture al tenant a terme de vie, & le au-tet part a celuy que auera le re-mainder. Et donque il per mon-ſtrance de le part del endenture, poit auer action de waſt enuers le tenant a terme de vie, et touts auters aduantages que celuy en le remainder poit auer en tiel caſe, &c.

on of Waſte nor other benefit by ſuch remaynder, unleſſe that hee hath the ſaid Deed in hand where-by the remaynder was entayled or granted to him. And becauſe that in ſuch caſe the Tenant for life peraduenture will retaine the Deed to him to this intent that he in the remaynder ſhould not haue any action of Waſte againſt him, for that hee cannot come to have the Deed in his poſſeſſion, it will bee a good and ſure thing in ſuch caſe for him in the remaynder, that a Deed indented bee made by him which will make ſuch Confirma-tion and the remaynder over, &c. and that hee which maketh ſuch Confirmation deliuer one part of the Indenture to the Tenant for life, and the other part to him that ſhall haue the remaynder. And then he by ſhewing of that part of the Indenture may have an Action of Waſte againſt the tenant for life and all other aduantages that he in the remainder may haue in ſuch a caſe, &c.

Vid. Sect. 325. 575. Vid. Pl. Com. in Colthirſts caſe. Doct. & Stud. cap. 20. fol. 93, 94. 8 R. 2. in waſte in Liure eſcrite. 17 E. 3. confirmat. 4. 35 H 6. fol. 8. 14 H 8. Pl. Com. 149. in Thorck-mortons caſe. 45 E. 3. 14. 15, 11 H. 4. 39 14 H. 4. 31.

¶ HEre Littleton putteth a caſe of a remaynder whereunto an Attornement is requiſite. And this is the firſt example of an Attornement in Law.

¶ *Remaynder a vn auter, &c.* Of this ſufficient hath bēn ſaid in the Chapter of Confirmation. Sect. 525.

¶ *Si non que il auoit le fait en poigne.* And albeit he hath no remedy to come to the Deed during the life of Tenant for life, yet becauſe he is priuie in eſtate, he ſhall not main-taine an Action of waſte without ſhewing the Deed, but when the remainder is once executed, he ſhall not need to ſhew the Deed.

¶ *Il ſerra bone & ſuer choſe, &c.* Hereby it appeareth how neceſſary it is to uſe learned aduice in a mans Conueyance, for thereby ſhall be preuented many queſtions, and not to follow the aduice of him that is experimented only. For as in Phyſicke, Nullum medica-mentum eſt idem omnibus, ſo in Law one forme or preſident of Conueyance will not ſit all caſes.

Sect.

Sect. 574.

¶ Item, ſi deux Joyntenants ſont, l'a queux leſſont lour terr̃ a vn auter pur terme de vie, rendant a eux & a lour heires certaine rent per an, en ceſt caſe ſi vn des Joyntenants en le reuerſion, releſſa a lauter Joyntenant en meſme le reuerſion, ceſt releas eſt bone, & celuy a que le releas eſt fait auera ſolemẽt le rent del tenant a terme de vie, & auera ſolement un briefe de waſte enuers luy coment q̃ il ne vnques attorneroit per force de tiel releas, &c. Et la cauſe eſt pur le priuity que vn foits fuit parenter le tenant a terme de vie, & eux en le reuerſion.

Alſo if two Joyntenants be, who let their Land to another for terme of life rendring to them and to their heires a certaine yearly rent. In this caſe if one of the Joyntenants in the reverſion releaſe to the other Joyntenant in the ſame reverſion this releaſe is good, and he to whom the releaſe is made ſhall have only the rent of the Tenant for life, and ſhall only have a Writ of Waſte againſt him although he never attorned by force of ſuch releaſe, &c. And the reaſon is for the privity which once was between the Tenant for life and them in the reuerſion.

¶ *Deux Iointenãts* And ſo it is (as it is here to be underſtood) albeit there be three or more Joyntenants, and one of them releaſeth to one of the other.

It is true, that there is a difference betwixt theſe Releaſes, for the Releaſe in the one caſe maketh no degree, but he to whom the Releaſe is made is ſuppoſed in from the firſt Feoffor, and in the other it worketh a degree, and he to whom the Releaſe is made is in the per by him, yet in neither of theſe caſes there is requiſite any Attornement, for both of them are within Littletons reaſon (for the privity, &c.)

¶ *Pur le priuitie, &c.* For if one Joyntenant make a Leaſe for years, reſerving a Rent and dieth, the Survivor ſhall not have the Rent, and therefore Littleton here addeth materially for the privity that was betwixt the Tenant for life and them in the reverſion. 2. Eliz. Dier. 176.

And here it is good to be ſeen what Grantors or others that make Conveyances, &c. are ſuch as their Grants or Conveyances are either good without Attornement, or where the Tenant is no way compellable to attorn. Tenant 45.E.3.6.b. 13.Eliz.Dier.288. Lib.3.fol. 86. Iuſtice Windhams Caſe.

for life ſhall not be compelled to attorne in a Quid juris clamat upon a grant of a reverſion by fine holden of the King in Chief without licence, but the reaſon hereof is not becauſe the Tenant for life might be charged with the fine, for his eſtate was more ancient than the fine levied, but becauſe the Court will not ſuffer a preiudice to the King, and the King may ſeiſe the reverſion and rent, and ſo the Tenant ſhall be attendant to another. Alſo it is a general rule, that when the grant by fine is defeaſible, there the Tenant ſhall not be compelled to attorne. 36.H.6.12.

As if an Infant levy a fine, this is defeaſible by writ of Error during his minority, and therefore the Tenant ſhall not be compelled to attorne.

So if the Land be holden in ancient Demeſne, and he in the reverſion levieth a fine of the reverſion at the Common Law, the Tenant ſhall not be compellable to attorne, becauſe the eſtate that paſſed is reverſible in a writ of Deceit. 5.E.3.25.31.H.3.Antient Demeſne 16.

So if Tenant in tail had levied a fine, the Tenant ſhould not be compelled to attorne, becauſe it was defeaſible by the iſſue in taile. 24.E.3.25.b.37.H.6.33. 48.E.3.23.

But now the Statutes of 4. H. 7. and 32. H. 8. having given a further ſtrength to fines to barre the iſſue in taile, the reaſon of the Common Law being taken away, the Tenant in this caſe ſhall be compelled to attorne, as it was adiudged (*) in Iuſtice Windhams Caſe. (*) Lib. 3. fol. 86. Iuſtice Windhams Caſe.

If an alienation be in Mortmain, the Tenant ſhall not be compelled to attorn, becauſe the Lord Paramont may defeat it. 17. E. 3. 7. 22. E. 3. 18.

Sect. 575.

¶ En meſme le maner, & pur meſme la cauſe eſt, lou hõe leſſa terre a vn auter pur terme de vie, le remainder a vn auter pur terme de vie, reſeruant le reuerſion al leſſour, en ceſt cas ſi celuy en le reuerſion releſſa a celuy en le remainder et a ſes heires tout ſon droit, &c. donqz celuy en le remainder ad vn fée, &c. et il auera vn briefe de Waſt enuers le tenant a terme de vie ſans aſſẽ attornement de luy, &c.

IN the ſame manner, and for the ſame cauſe is it, where a man letteth land to another for life, the remainder to another for life, reſerving the reverſion to the leſſor, in this caſe if he in the reverſion releaſeth to him in the remainder and to his heirs all his right, &c. Then he in the remainder hath a fee, &c. And he ſhall have a writ of Waſt againſt the tenant for life without any attornement of him, &c.

Vid. Sect. 549. 553. 556.

This needeth no explication.

Sect. 576, 577.

¶ There have ben now in all ſeven examples, that Littleton putteth of an Attornment in Law, and here he putteth two caſes alſo of a notice in Law. And the reaſon of both theſe are here rendred by Littleton. Firſt for the notice, Littleton ſaith that the Leſſée ſhall not by Law be miſconuſant of the Feoffments that were made of and upon the ſame land. And the reaſon of the Attornment is becauſe the whole fee ſimple paſſeth by the Feoffment, and the Leſſée by his regreſs teacheth the reverſion in the Feoffes, which (ſaith Littleton) is a good Attornement. The ſame Law it is of a Tenant by Statute Merchant or Staple, or Elegit. And ſo it is of a Leaſe for life, as Littleton here ſaith, and ſo it was reſolved (e) in Brasbritches caſe, and after in the Dean of Pauls his caſe in the

46. E. 3. 46. b. 2. H. 5. 4. 5 H. 5. 12. 34. H. 6. 6. 18. E. 3. 49. 9. H. 6. 10.

(e) Brasbritches caſe. P. 13. Eliz. Dean of Pauls caſe. 20. Eliz.

¶ Item, ſi homeleſſa terres ou tenements a vn auter pur terme des ans, et puis il ouſta ſon termour, & ent enfeoffa vn auter en fée, & puis le tenant a term dans enter ſur le feoffée, enclaimant ſon terme, &c. et puis fait waſt, en ceſt caſe le feoffée auera per la ley vn briefe de waſt enuers luy, et vncore il nattornaſt pas a luy. Et la cauſe eſt, come ieo ſuppoſe, p ceo que celuy que ad droit de auer terres ou tenements pur terñ dans, ou auterment, ne ſeroit per la ley miſconuſant de les feoffments q̃ fueront faits de

ALſo if a man let lands or tenements to another for terme of years, and after he ouſt his termor, and thereof enfeoffe another in fee, and after the tenant for yeares enter upon the feoffee, claiming his term, &c. and after doth waſte, in this caſe the feoffee ſhall have by law a Writ of Waſte againſt him, and yet hee did not attorne unto him. And the cauſe is as I ſuppoſe, for that he which hath right to have lands or tenements for years, or otherwiſe ſhould not by Law bee miſconuſant of the feoffments which were made of and upon the ſame

de et ſur meſmes les terres, &c. et entant que per tiel feoffment le tenant a terme dans fuit mis hors de ſon poſſeſſiõ, et p ſon entre il cauſaſt le reuerſion deſtre a celuy a que le feoffment fuit fait, ceo eſt bon attornement, car celuy a que le feoffment fuit fait, auoit nul reuerſion deuant que le tenant a terme dans auoit enter ſur luy, pur ceo que il fuit en poſſeſſion en ſon demeſne come de fé, et pur lent det tenant a terme dans il y ad forſque vn reuerſion, quel eſt p le fait l'teñ a term dis, &. p ſon entrie, &c.

lands, &c. and inaſmuch as by ſuch feoffment the tenant for yeares was put out of his poſſeſſion, and by his entrie he cauſed the reverſion to be to him to whom the feoffment was made, this is a good attornement, for hee to whom the feoffment was made had no reuerſion before the tenant for years had entred upon him, for that he was in poſſeſſion in his demeſne as of fee, and by the entrie of the tenant for yeares, he hath but a reverſion, which is by the act of the tenant for years, s. by his entrie, &c.

Common place. But ſhall the Leſſee in this caſe whether he will or no doe an act that amount to an Attornement, viz by his regreſſe or elſe loſe the profit of his land? And ſome do hold that in that caſe if the Leſſee for life do recover in an Aſſiſe, this is no Attornement, becauſe he came to it by courſe of Law, and not by his voluntary act. And yet in that caſe as in the caſe of the fine the ſtate of the reuerſion is in the Feoffee. (f) But others do hold it all one in caſe of a recovery, and a regreſs.

(f) 18. E. 3. 48. b. Lib. 6. fol. 60. b. Sir Moyle Finches caſe.

Sect. 577.

MEſme la ley eſt, come il ſemble, lou vn Leas eſt fait pur terme dvie, ſauant le reuerſion al Leſſour, ſi le Leſſour diſſeiſiſt le Leſſé, & fait feoffment en fé, ſi le tenant a terme de vie enter et fait waſt, le feoffé auera briefe de waſte ſans aſcun auter attournement, Cauſa qua ſupra, &c.

THe ſame Law is, as it ſeemeth where a Leaſe is made for life, ſaving the reverſion to the Leſſor, if the Leſſor diſſeiſe the Leſſee, and make a feoffment in fee, if the tenant for life enter and make waſte the Feoffee ſhall have a writ of waſte without any other attornement, *Cauſa qua ſupra, &c.*

(g) If the Leſſor diſſeiſe Tenant for life or ouſte Tenant for years, and maketh a feoffment in fee, by this the rent reſerved upon the Leaſe for life or years is not extinguiſhed, but by the regreſs of the Leſſee the rent is revived, becauſe it is incident to the reverſion: and ſo hath it been adiudged. But if a man be ſeiſed of a rent in fee, and diſſeiſe the Tenant of the land, and make a feoffment in fee, the Tenant reſentreth, this rent is not revived. And ſo note a diverſity between a rent incident to a reverſion, & a rent not incident to a reverſion.

(g) 9. H. 6. 16. Dean of Pauls caſe, ubi ſupra.

If two ioynt Leſſees for years or for life be ouſted or diſſeiſed by the Leſſor, and he enfeoffe another, if one of the Leſſees re-enter, this is a good Attornment, and ſhall binde both, for an Attornement in Law is as ſtrong as an Attornement in Deed.

If a man make a Leaſe for life, and then grant the reverſion for life, and the Leſſee attorne, and after the Leſſor diſſeiſe the Leſſee for life, and make a feoffment in fee, and the Leſſee re-enter, this ſhall leave a reverſion in the Grantee for life, and another reverſion in the Feoffee, and yet this is no Attornement in Law of the Grantee for life, becauſe he doth not act, nor aſſent to any which might amount to an Attornement in Law. Et res inter alios acta alteri nocere non debet. Neither hath the Grantee for life the land in poſſeſſion, ſo as he may well be miſconuſant of the feoffment made upon the Land, and ſo out of the reaſon of Littleton. But yet the reverſion in fee doth paſs to the Feoffee:

Sect.

Sect. 578.

HEre it appeareth, that where the Ancestor taketh an Estate of Freehold, and after a Remainder is limited to his right Heirs, that the Fee simple vesteth in himself, as well as if it had been limited to him and his heirs, for his right heirs are in this case words of limitation of estate, and not of purchase. Otherwise it is where the Ancestor taketh but an estate for years: As if a Lease for years be made to A. the remainder to B. in Tayle, the remainder to the right heirs of A. there the remainder vesteth not in A. but the right heirs shall take by purchase if A. die during the estate Taile, for as the Ancestor and the Heir are Correlativa of Inheritances, so are the Testator & Executor, or the Intestate and Administrator of Chattels. And so it is if A. make a Feoffment in Fee to the use of B. for life, and after to the use of C. for life or in Taile, and after to the use of the right heirs of B. B. hath the Fee simple in him as well when it is by way of limitation of use, as when it is by Act executed.

¶ Item, si leas soit fait pur terme d vie, l' remainder a vn auter en le Taile, le remaind ouster a les droit heires le tenant a terme de vie. En cest case si le tenant a terme de vie granta son remainder en fee a auter per son Fait, cel remainder maintenant passa per le fait sans ascun Attournment, &c. Car si ascun doit attorne en cest case, ceo serroit le tenant a terme de vie, et en vain serroit que il atturneroit sur s grant demesne, &c.

ALso if a Lease be made for life, the remainder to another in Tail, the remainder over to the right heirs of the Tenant for life: In this case if the Tenant for life grant his Remainder in fee to another by his Deed, this Remainder maintenant passeth by the Deed without any Attornment, &c. for that if any ought to attourn in this case, it should be the Tenant for life, and in vain it were that he should attorn upon his own Grant, &c.

¶ *En vaine serroit, &c.* Quod vanum & inutile est Lex non requirit. Lex est ratio summa, quæ jubet quæ sunt utilia & necessaria, & contraria prohibet; and arguments drawn from hence are forcible in Law.

Vid. Sect. 194 273.

Sect. 579.

¶ Item, si soit Seignior et tenant, et le Tenant tient del Seignior per certaine rent, et service de chivaler, si le Sñr granta les services de son tent p fine, les services sont maintenant en le grantee per force del fine, mes uncore le Sñr ne port pas distreyne p ascun parcel de les services sans attournment: Mes si le tenant deuia (son heire deins age) le Sñr avera le gard del corps

ALso if there be Lord and Tenant, and the Tenant holdeth of the Lord by certain Rent and Knights service, if the Lord grant the services of his Tenant by fine, the services are presently in the Grantee by force of the Fine: but yet the Lord may not distreine for any parcel of the services, without Attornement. But if the Tenant dieth, his heir within age, the Lord shall have the wardship

corps del heire, et de ſes terres, &c. coment que il ne vnq̃ atturnaſt, pur ceo que le Seigniorie fuit en le grantée, maintenant p force del fine. Et auxy en tiel cas, ſi le tenant morust ſans heire, le Seignior auera les tenemẽts p voy deſcheat.

of the body of the heir, and of his lands, &c. albeit he never attorned, becauſe that the Seigniorie was in the Grantee preſently by force of the Fine. And alſo in ſuch caſe if the Tenant die without Heir, the Lord ſhall have the Tenancy by way of Eſcheat.

HEre Littleton beginneth to ſhew what advantages the Conuſee of a Fine may take before Attornement, and what not.

(h) First, he cannot diſtreyne becauſe an Avowrie is in lieu of an Action, and thereunto priuity is requiſite. So likewiſe, and for the ſame cauſe he can have no Action of Waſte, nor Writ of Entry, ad Communem legem, or in Conſimili caſu, or in caſu proviſo, Writ of Cuſtoms and Services, nor Writ of Ward, &c.

But if a man make a Leaſe for years, and grant the reverſion by fine, if the Leſſee be ouſted, and the Conuſee diſſeiſed, the Conuſee without Attornement ſhall maintain an Aſſiſe, for this writ is maintained againſt a ſtranger, where there needeth no priuity. And ſuch things as the Lord may ſeiſe or enter into without ſuing any Action, there the Conuſee before any Attornement may take benefit thereof, as to ſeiſe a Ward or Heriot, or to enter into the lands or tenements of a Ward, or eſcheated to him, or to enter for an alienation of Tenant for life or yars, or of Tenant by Statute Merchant Staple, or Elegit, to his diſheriſon.

(h) 8.E.3.44.26.F.3.63. 10.H.6.16.34.H.6.7. 12.E.4.4.44.E.3.7. 5.H.5.12.48.F.3.15.b. 3.E.2.Droit.33.

Sect. 580, 581, 582.

EN meſme le manner eſt, ſi hée granta le reuerſion de ſon tenaunt a terme de vie a vn auſ per fine, le reverſion paſſa maintenant al Grantée per force del fine, mes le grantée iammes naũa Action d Waſt ſans atturnment, &c.

IN the ſame manner it is, if a man graunt the reverſion of his Tenant for life, to another by fine, the reverſion maintenant paſſeth to the Grantee by force of the fine, but the Grantee ſhall never have an Action of Waſt without Attornment, &c.

Sect. 581.

MES vncore ſi le Tenant a terme de vie alienaſt en fée, le grantée poet enter, &c. pur ceo que l'reuerſion fuit en luy per force del Fine, et tiel alienation fuit a ſon diſheritance.

BUt yet if the tenant for life alienes in fee, the Grantee may enter, &c. becauſe the Reverſion was in him by force of the fine, and ſuch Alienation was to his diſheritance.

IT is ſaid in our books, That if Tenaunt for life have a priuilege not to be impeachable of Waſte, or any other priuilege, if he doth attorne without ſaving his priuilege, that hée hath loſt it; which is ſo to be underſtood, where he attornes in a Quid juris clamat brought by the Conuſee of a fine, that if he claimeth not his Priuilege, but attorne generally, his Priuiledge is loſt, for that the Writ ſuppoſeth him to be but a bare Tenant for life, and by his general Attornement according to the writ he is barred for ever to claim any priuilege but a bare Eſtate for life. But if upon a grant of the reverſion by deed, the Tenant for life doth attorne, he loſeth no priuilege, for there can be no concluſion or barre by the Attornement in paiis: and ſo it is of an Attornement in Law. As if the Leſſor diſſeiſe the Leſſee for life, and make a Feoffement in Fee, and the Leſſee re-enter, this is an attornement in law, which ſhall not preiudice him

40.E.3.7.43.E.3.5. 48.E.3.32.45.E.3.6. 21.E.3.48.24.E.3.32. 39.H.6.25.F.N.B.136.b.

Sect.

of any priviledge: so it is if the Lessor levie a Fine of the reversion, and the Grantee die without heire, whereby the Reversion escheateth, in this case the Law doth supply an Attornement, and therefore the Lessee shall lose no priviledge. But in the Quid iuris clamat, if the Lessee shew his estate and his priviledge, and is ready, saving to him his priviledge, &c. to attorne, hereby either his priviledge shall bee allowed and entred of record, or he shall not be compelled to attorne: (b) and if the plaintife be within age, so as hee cannot acknowledge the priviledge, the Tenant shall not be compelled to attorne until his full age, when he may acknowledge it. But otherwise it is (as some hold) if a Quid iuris clamat be brought by Baron and Feme, the priviledge shall be entred into the Rolle notwithstanding shee is a Feme Covert. And in a Per quæ seruicia brought by the Grantee of the Reine, the Tenant may shew that he held by homage Auncestrell, and saving to him his Warrantie and acquital, he is readie to attorne. In the same manner, if the Tenant hath any other acquitall, and the Reine levie a Fine to one for life, the remainder to another in Fee, the Tenant for life bringeth a Per quæ seruicia, and the Tenant is ready to attorne, saving his acquitall, & the Plaintife acknowledgeth it, and thereupon the Tenant attorne, Tenant for life dieth; in this case albeit regularly the Attornement to the Tenant for life is an Attornement to him in the Remainder, yet in this case hee in the remainder shall not distraine, till he hath acknowledged the acquitall, which must be in a Per quæ seruicia brought by him against the Tenant.

(b) 43. E. 3. 5.

35. E. 3. 11. a. Vet. N. B. in Per quæ seruicia. 5. E. 3. Meine 56. & Per quæ seruicia 16. 37. H. 6. 33. 39. H. 6. 25. 18. E. 47.

Vid. Sect. 557.

Sect. 582.

¶ MEsne cēcas lou le Sñr granta les services d̄ son Tenant per fine, si Tenant deuie (son heire esteant de plein age) le Grantee per le fine nauera reliefe, ne vnques distreyne-ra pur reliefe, sinon que il auoit lattornement del Tenaunt que mozust, car de tiel chose que gist en di-stresse, sur que le Bre d̄ Repleuin est sue, &c. home doit & couient dauower l' prisel boñ et droiturel, &c. et la couient estre attornement del Tenant, co-ment que le graunt de tiel chose soit per fine, mes dauer le gard de les terres ou tenemēts illint tenus durant le nonage l'heire, ou de eux auer per voy descheat, la ne besoigne ascun di-stresse, &c. mes vn entrie en la terre per force de le droit del seigniory que l' grantee ad per force del fine, &c. Sic vide di-uersitatem.

BVt in this case where the Lord granteth the services of his Tenant by fine, if the Tenant die (his heire being of full age) the grantee by the fine shall not haue reliefe, nor shall euer distreine for reliefe, unlesse that hee hath the Attornement of the Tenant that dieth: for of such a thing which lieth in Distresse, whereupon the Writ of Repleuin is sued, &c. a man must and ought to auow the taking good and right-ful, &c. and there there ought to be an attornement of the tenant, al-though the graunt of such a thing be by fine: But to haue the ward-ship of the lands or te-nements so holden during the nonage of the heire, or to haue them by way of escheat, there needs no di-stress, &c. but an en-trie into the land by force of the right of the Seigniorie, which the Grauntee hath by force of the fine, &c. *Sic vide diversitate, &c.*

¶ *Alien en fee, &c.* Of this sufficient hath bin said in the next precedent Section.

¶ *Nauera reliefe, &c.* Of this sufficient hath bin said in the next precedent Section.

Sect.

Sect. 583.

ITem, ſi ſoit Seignior, meſne & tenant, & l'meſne grauntа per fine les ſeruices de ſon tenāt a vn auter en fee, et puis le grantē morust ſans heire, ore les ſeruices del meſnaltie deuiendront & eſcheate al Seignior Paramont per voy deſcheat, & ſi apres les ſeruices del meſnaltie ſont aderere, en ceſt cas celuy que fuit Seignior Paramont poit diſtreiner le tenant, nient obſtant que le tenant ne vnques atturnaſt, et le cauſe eſt, pur ceo que le meſnaltie fuit en fait en le grantē per force de le dit fine, & le Seignior Paramont puiſſoit auower ſur le grantē, pur ceo que il fuit ſon tenant en fait, coment que il ne ſerroit a ceo compelle, &c. Mes ſi le grantor en ceſt caſe deuiaſt ſans heire en la vie le grantē, donque il ſerroit compelle dauower ſur le grantē, & auxy entant que le Seigniour Paramont ne claime le meſnaltie per force del graunt fait per fine leuie per le meſne, mes per vertue de ſon Seigniorie Paramont, s. per voy deſcheat, il auowa ſur le tenant pur les ſeruices que le meſne auoit, &c. coment que le tenant ne vnques atturna pas.

ALſo if there be Lord, Meſne and Tenant, and the Meſne grant by fine the ſervices of his Tenant to another in fee, and after the grantee die without heir, now the ſervices of the meſnaltie ſhall come and eſcheate to the Lord Paramont by way of eſcheat; and if afterwards the ſervices of the Meſnalty be behind; in this caſe he which was Lord Paramont may diſtreine the Tenant, notwithſtanding that the Tenant did never attorne, and the cauſe is, for that the Meſnalty was in deed in the Grantee by force of the ſaid fine, and the Lord Paramont may avow upon the Grantee becauſe in deed he was his Tenant, albeit he ſhall not be compelled to this, &c. But if the Grantor in this caſe had died without heire in the life of the Grantee, then he ſhould be compelled to avow upon the Grantee, and alſo in as much the Lord Paramont doth not claim the Meſnaltie by force of the grant made by fine leuied by the Meſne but by vertue of his Seigniorie Paramont, *viz.* by way of eſcheat he ſhall avow upon the Tenant for the ſervices which the meſne had, &c. albeit that the Tenant did never attorne.

HEre Littleton putteth a Caſe where one that claimeth under a Conuſee by fine may diſtreine or maintaine any Action, albeit there was never any Attornement made to the Conuſee or to him that hath his eſtate. 45.E.3.2.34.H.6.7. 37.H.6.38. 39.H.6.33. 5.H.7.18.per Curiam.

And here is a diverſity betwéen an act in Law that giveth one Inheritance in lieu of another, and an act in Law that conveyeth the eſtate of the Conuſee only. Of the former Littleton here putteth an example of the eſcheat of the Meſnaltie which doweth the Seigniorie Paramont, and therefore reaſon would that the Lord by this act in Law ſhould have as much benefit of the Meſnaltie eſcheated, as he had of the Seigniorie that is dowried, and the rather for that the Law caſteth it upon him, and he hath no remedy to compel the Tenant to Mmmm attorne. Lib.6.fol.68. Sir Moyle Finches Caſe.

attorne. Another reaſon hereof Littleton here prædeth, becauſe the Lord cometh to the Meſnalty by a Seigniory Paramount, and therefore there needeth no Attornement. (c) As if Leſſee for life be of a Mannor, and he ſurrender his eſtate to the Leſſor, there needeth no attornement of the Tenants, becauſe the Leſſor is in by a title Paramount. But if the Conuſee dieth, and the Law caſteth his Seigniorie upon his heir by deſcent, he ſhall not be in any better eſtate than his Anceſtor was, becauſe he claimeth as heir meerly by the Conuſee

(c) Temps E. 2. Attorn. 18. 39. H. 6. 38. per Priſot.

So it is (as hath been ſaid) if the Conuſee of a Fine before Attornement bargaineth and ſelleth the Seigniorie by deed indented and enrolled, the Bargainee ſhall not diſtraine becauſe the Bargainor, from whom the Seigniorie moveth, had never actual poſſeſſion.

So and for the ſame reaſon if a Reverſion be granted by fine, and the Conuſee before Attornement diſſeiſe the Tenant for life, and make a feoffment in fee, and the Leſſee re-enter, the feoffee ſhall not diſtraine.

Sir Moyle Finches caſe, ubi ſupra.

Sect. 584.

HEre Littleton expreſſeth two diverſities, firſt between an act in law, & the grant of the party. This caſe is put of an (d) eſcheat, which is a meer act in Law, but ſo it is when it is partly by Act in Law, and partly by the Act of the party, as if the Conuſee of a Statute Merchant extendeth a Seigniorie or rent, he ſhall diſtraine without any Attornement. If a man make a Leaſe for life or years, and after levie a fine to A. to the uſe of B & his heires, B. ſhall diſtraine and have an action of waſte albeit the Conuſee never had any Attornement, becauſe the reverſion is veſted in him by force of the Statute, and hath no remedy to compel the Leſſee to attorne.

(d) 45. E. 3. 2. 34. H. 6. 7. 5. H. 7. 18. per Curiam.

13. H. 4. auowrie 237.

Lib. 6. fol. 68. in Sir Moyle Finches caſe.

17. H. 8. cap. 10.

And ſo it is of a bargain and ſale by deed indented and inrolled, but this is by force of a Statute ſince Littleton wrote.

EN meſme le maner eſt, lou le reuerſion dun tenant a terme de vie ſoit grant per fine a vn auter en fee, & le grantee apres mourſt ſans heire, ore le Seignior ad le reuerſion y voy deſcheat. Et ſi apres le tenant fait waſt, le Seignior auera briefe de waſt enuers luy, nient contreſteant que il ne unques attorna, Cauſa qua ſupra. Mes lou vn home claime per force del graunt fait per le fine, s. come heire, ou com aſſignee, &c. la il ne diſtreinera ne auowera, ne auera action de waſt, &c. ſans Attornement.

IN the ſame manner it is, where the reverſion of a Tenant for life is granted by fine to another in fee, and the grantee afterwards dieth without heire, now the Lord hath the reverſion by way of eſcheat, and if after the Tenant maketh waſt, the Lord ſhall have a Writ of Waſte againſt him, notwithſtanding that he never attorned, *Cauſa qua ſupra.* But where a man claimeth by force of the grant made by the fine s. as heir or as aſſignee, &c. there he ſhall not diſtraine nor avow, nor have an action of waſte, &c. without Attornement.

Secondly, where he that cometh in by Act in Law is in the per, as the heire of the Conuſee, who letteth in his Anceſtors ſeat, Tanquam pars anteceſſoris de ſanguine, and the Lord by eſcheat, which is an eſtranger, and cometh in meerly in the Poſt.

Sect. 585.

ITem, en ancient Boroughs & Cities, lou terrs & tenements

ALſo in ancient Boroughs and Cities, where Lands and Te-

ments deins meſme les boroughes et Cities ſont deuiſable per teſtament per cuſtome et vſe, &c. ſi en tiel borough ou citie home ſoit ſeiſie de rent ſeruice, ou de rent charge, et deuiſa cel rent ou ſeruice a vn auter per ſon teſtament et mozuſt, en ceſt cas celuy a que tiel deuiſe eſt fait, poit diſtreiner le tenant pur le rent ou ſeruice aderere, coment que le tenant nattorna pas.

nements within the ſame Boroughes and Cities are deviſable by teſtament by cuſtom and uſe, &c. if in ſuch Borough or City a man be ſeiſed of a rent ſervice, or of a rent-charge, and deviſeth ſuch rent or ſervice to another by his teſtament and dieth, In this caſe he to whom ſuch deviſe is made may diſtreine the tenant for the rent or ſervice arere, although the tenant did never attorne.

¶ Here doth Littleton put a caſe where a man may have a Seigniory, Rent, Reverſion or remainder merely by the act of the party and may diſtraine, and have any action without any Attornement, and that is by deviſe of lands deviſable by cuſtome when Littleton wrote by the laſt Will and Teſtament of the owner. 34.H.6.6.5.H.7.18. 19.H.6.24.21.H.6.38.2. F.N.B.121.n.

Sect. 586.

EN meſme le maner eſt lou home leſſa tiels tenements deuiſables a vn auter pur terme de vie, ou pur terme dans, et deuiſa le reuerſion per ſon teſtamēt a vn auter en fee, ou en fee taile et mozuſt, et puis le tenant fait waſt, celuy a que le deuiſe fuit fait auera briefe de waſt, coment que le tenant ne vnque attorna. Et la cauſe eſt pur ceo, que la volunt le deuiſour fait per ſon teſtament ſerra perfozme ſolonque lentent del deuiſour, et ſi leffect de ceo girroit ſur lattournement del tenant, donques per caſe le tenant ne voyle vnques atturner, et donques le volunt del deuiſoz ne ſerroit vnque perfozme, &c. et pur ceo le deuiſee diſtreinera, &c. ou auera action de waſt, &c. ſans attourniment. Car ſi home deviſa tiels tenements a vn auter per ſon teſtament, Habend' ſibi imperpetuum, & mozuſt, et le deuiſee enter, il ad fee ſimple,

IN the ſame manner is it, where a man letteth ſuch tenements deviſable to another for life, or for years, and deviſeth the reverſion by his Teſtament to another in fee, or in fee taile, and dyeth, and after the Tenant commits waſte, he to whom the deviſe was made ſhall have a writ of waſte, although the Tenant doth never attorne. And the reaſon is for that the will of the Deviſor made by his Teſtament ſhall be performed according to the intent of the Deviſor, and if the effect of this ſhould lye upon the Attornement of the tenant, then perchance the Tenant would never attorne, and then the will of the deviſor ſhould never be performed, &c. and for this the deviſee ſhall diſtraine, &c. or he ſhall have an action of waſte, &c. without attornement. For if a man deviſeth ſuch tenements to another by his teſtament, *Habend' ſibi imperpetuum*, & dieth, and the de-

ple, Cauſa qua ſupra; vncore ſi fait de feoffment vſt eſte fait a luy per le deuiſor en ſa vie de meſmes les tenements, Habend' ſibi imperpetuum, et liuery de ſeiſin ſur ceo fuit fait, il naueroit eſtate forſque pur terme de ſa vie.

viſee enter, he hath a fee ſimple, *Cauſa qua ſupra*, yet if a deed of feoffment had been made to him by the deviſor of the ſame tenements, *Habend' ſibi imperpetuum*, & livery of ſeiſin were made upon this he ſhould have an eſtate but for terme of his life.

BOth this and the precedent caſe ſtand upon one and the ſame reaſon which Littleton here putteth, viz. becauſe that the will of the Deviſor expreſſed by his Teſtament ſhall be performed according to the intent of the Deviſor, and it ſhall not lie in the power of the Tenant or Leſſee to fruſtrate the will of the Deviſor by denying his Attornment. Here Littleton mentioneth a maxim of the Common Law, viz. Quod ultima voluntas teſtatoris eſt perimplenda ſecundum veram intentionem ſuam, and reipublicæ intereſt ſuprema hominum teſtamenta rata haberi.

Vide Sect. 167.
Bracton li. 2. f. 11. & f. 60.
Fleta lib. 2. cap. 15.
Britton fol. 78. & f. 312. b.

¶ *Teſtament.* Teſtamentum, i. teſtatio mentis, which is made nullo præſentis metu periculi, ſed ſola cogitatione mortalitatis. Omne teſtamentum morte conſummatum.

22. E. 3. 16. 34. H. 6. 7. 15. H. 7. 12. 19. H. 8. 4.

¶ *Car ſi home deuiſa tiels tenements a vn auter, &c.* Here Littleton putteth a caſe where the intent of the Teſtator ſhall be taken, viz. where a man by deviſe ſhall have a fee ſimple without theſe words heirs, and here Littleton putteth the diverſitie between a will and a feoffment.

Vide Sect. 167.

Now by the Statutes of 32. and 34. H. 8. (as hath been ſaid in the chapter of Burgage) Lands, Tenements and Hereditaments are deviſable, as by the ſaid Acts do appear.

Sect. 587.

¶ ITem, ſi hom̃ ſeiſie dun mannor quel eſt parcel en demeſn̄ et parcel en ſeruice, et ent ſoit diſſeiſie, mes les tenants que teignont del mannor ne vnq̃ attournant a le Diſſeiſor, en ceſt cas coment que le Diſſeiſor morust ſeiſie et ſon heire ſoit eins per diſcent, &c. vncore poit le Diſſeiſée diſtreine pur le rent arere, et auer les ſeruices, &c. Mes ſi les tenants viendront al Diſſeiſor, et diont, nous deueignomus voſtre tenants, &c. ou auter attournement a luy feſoyent, &c. & puis le Diſſeiſor morust ſeiſie, donque le Diſſeiſée ne poit diſtreine pur le rent, &c. pur ceo que tout le manor diſcendiſt al heire le Diſſeiſor, &c.

ALſo if a man be ſeiſed of a Mannor which is parcel in demeſne and parcel in ſervice, and is thereof diſſeiſed, but the tenants which hold of the Mannor do never attorne to the Diſſeiſor. In this caſe albeit the Diſſeiſor dieth ſeiſed, and his heir is in by diſcent, &c. yet may the Diſſeiſee diſtreine for the rent behind, and have the ſervices, &c. but if the tenants come to the Diſſeiſor and ſay, We become your tenants, &c. or make to him ſome other attornement, &c. and after the Diſſeiſor dieth ſeiſed, then the Diſſeiſee cannot diſtraine for the rent, &c. for that all the Mannor deſcendeth to the heire of the Diſſeiſor, &c.

¶ LIttleton having ſpoken of Eſtates gained by lawful conveyances, doth now ſpeak of Eſtates gained by wrong. And here putteth a caſe of a diſſeiſin of a Mannor, where it appeareth, that the Diſſeiſor cannot diſſeiſe the Lord of the rents or ſervices without the

the Attornment of the Tenants to the Diſſeiſor, for ſeeing an Attornement is requiſite to a feoffment and other lawful conveyances. A fortiori, a Diſſeiſor or other wrong doer ſhall not gain them without Attornement. The like law is of an Abator and an Intruder. But albeit the Diſſeiſor hath once gotten the Attornement of the Tenants and payment of their rents, yet may they refuſe afterwards for avoiding of their double charge. And here the Attornement of the Tenant of a Mannor to a Diſſeiſor of the demeanes ſhall diſpoſſeſſe the Lord of the rents and ſervices parcel of the Mannor, becauſe both demeanes, rents and ſervices make but one entire Mannor, and the demeanes are the principal: but otherwiſe it is of rents and ſervices in groſs, as in this next Section our Author teacheth us. 6.H.7.14.11.H.7.28. 11.H.4.14.b.

Sect. 588, 589.

¶ Mes ſi vn tient de moy per rent ſeruice, le quel eſt vn ſeruice en groſſe, et nient p reaſon de mon mannor, et vn auter que nul droit ad, claima le rent, et reſceiue et prent meſme le rent de mon tenant per coherſion de diſtres, ou per auter forme, et diſſeiſiſt moy per tiel prender de rent, coment q̄ tiel diſſeiſor mor-uſt iſſint ſeiſie ē pernant ď rent, vncore apres ſa mort ieo puiſſoy bien diſtreiner le tenant pur le rent que fuit aderere deuant le deceaſe del diſſeiſor, et auxy apres ſon deceaſe. Et la cauſe eſt, pur ceo que tiel diſſeiſor neſt pas mon diſſeiſor forſque a ma election et ma volunt. Car coment que il prent l' rent de mon tenant, &c. vncore ieo puiſſoy a touts iours diſtreiner mon tenant pur le rent arere, iſſint que il eſt a moy forſque ſi come ieo voile ſufferer le tenant, eſtre per tant de temps arere p̄ paier a moy m̄ le rent, &c.

But if one holdeth of me by rent ſervice, which is a ſervice in groſs, and not by reaſon of my Mannor, and another that hath no right, claimeth the rent, & receives & taketh the ſame rent of my tenant by coertion of diſtreſs, or by other form, and diſſeiſeth me by ſuch taking of the rent. Albeit ſuch Diſſeiſor dieth ſo ſeiſed in taking of the rent, yet after his death I may well diſtreine the tenant for the rent which was behind before the deceaſe of the Diſſeiſor, and alſo after his deceaſe. And the cauſe is, for that ſuch Diſſeiſor is not my Diſſeiſor but at my election and will. For albeit he taketh the rent of my tenant, &c. yet I may at all times diſtreine my tenant for the rent behind, ſo as it is to me but as if I will ſuffer the tenant to be ſo long time behind in payment of the ſame rent unto me, &c.

Sect. 589.

¶ Car le payment de mon tenant a vn auter, a que il ne doit pas payer, neſt pas diſſeiſin a moy, ne ouſta moy pas de mon rent ſans ma volunt et ma election, &c. Car coment que ieo puiſſoy auer Aſſiſe enuers tiel Pernor

For the payment of my Tenant to another to whom he ought not to pay, is no diſſeiſin to me, nor ſhall ouſt me of my rent, without my will and election, &c. For although I may have an Aſſiſe againſt ſuch Pernor, yet this is at my ele-

noz, uncoze ceo eſt a mon election, ſi ieo voile prender luy come mon diſſeiſor ou non. Iſſint tiels diſcents de rents en gros, ne oufteront pas le ſeignior de diſtreyner, mes a cheſcun temps ils poyent bien diſtreyner pur l'rent arere, &c. Et en ceſt caſe ſi apres le diſtreſſe de luy que iſſint torciouſment prift le rent, ieo graunt per mon fait le ſeruice a vn auk, et le tenant attourna, ceo eſt aſſets bone, et les ſeruices per tiel grant et attournement maintenant ſon en l'Grantee, &c. Mes autrement eſt, lou le rent eſt parcel del Manor, et le diſſeiſor nemt ſeiſe del Manor entier, come en le caſe procheine auant eſt dit &c.

action, whether I will take him as my Diſſeiſor, or no. So ſuch diſcents of Rents in groſs ſhall not ouſt the Lord of his Diſtreſs, but at any time he may well diſtreyne for the Rent behind, &c. And in this caſe if after the diſtreſs of him which ſo wrongfully took the Rent, I grant by my Deed the ſervice to another, and the Tenaunt attorne, this is good enough, and the ſervices by ſuch Grant and Attornement are preſently in the Grantee, &c. But otherwiſe it is where the Rent is parcel of a Mannor, and the Diſſeiſor dieth ſeiſed of the whole Mannor, as in the caſe next before is ſaid, &c.

HEre Littleton putteth a diverſity betweén a Rent ſervice parcel of a Mannor, whereof he had ſpoken before, and a Rent ſervice in Groſſe. For a man cannot be diſſeiſed of a Rent ſervice in Groſs, Rent charge, or Rent ſecke by Attornement & payment of the Rent to a ſtranger, but at his Election; for the rule of Law is, Nemo reddituum aliénus invito Domino percipere aut poſſidere poteſt; and our Author hath before * taught us, what be Diſſeiſins of Rents ſervices, Rents charges, and Rent ſecks, and payment to a ſtranger is note of them, but at the Lords election, as our Author here ſaith.

* Vid. Sect. 237, 238, 239, 240.

¶ *Perceit*, i. The taker of my Rent. But if the diſſeiſee bring an Aſſiſe againſt ſuch a Perceit, then he doth admit himſelf out of poſſeſſion.

24. E. 3. 4. 1. E. 5. 5. See the Authorities there following in the next Paroſſe.

¶ *Diſcents*. A diſcent of a rent in groſſe bindeth not the right owner but that he may diſtreyne, albeit he admitted himſelf out of poſſeſſion, and determined his election, as by bringing of an Aſſiſe, &c.

5. E. 4. 1. 23. H. 3. tit. Aſſ. 439.
24. E. 3. 40. 34. 16. Aſſ. P. 15.
16. E. 3. Releaſe 56. 1. E. 5
5. F. N. B. 179. E. 1. 5. E. 4. 8
Fleet. li. 4. ca. 12.

¶ If the Tenant of the land pay the Rent to a ſtranger which hath no right thereunto, and the right owner releaſe to him, this releaſe is good becauſe he thereby admitted himſelf to be out of poſſeſſion. But if the Tenant had given him any thing in name of Attornement, and the right owner had releaſed to him, this Releaſe had been void, becauſe an Attornement one can be no diſſeiſin of the Rent.

¶ *Ieo grant per mon fait, &c.* This alſo proveth, that the right owner is not out of poſſeſſion, and that this grant over is a demonſtration of his election that he is in poſſeſſion.

Sect. 590.

ITem, ſi ieo lie ſeiſe dun manor, parcel en demeſn, et parcel en ſeruice, et ieo done certaine acres del terre, parcel de demeſne de meſme le manor a vn auter

ALſo if I be ſeiſed of a Mannor, parcel in Demeſne, and parcel in Service, and I give certain acres of the land, parcel of the Demeſne of the ſame Mannor, to

auter en le taile, rendant a moy et a mes heires vn certaine rent, &c. Si en ceſt caſe ieo ſue diſſeiſie de la Manor, et touts les tenants atturnont et payont lour rents al diſſeiſor, et auxy le dit tenant en le taile paya le rent per moy reſerue al Diſſeiſor, et puis le diſſeiſor morust ſeiſie, &c. et ſon heire entra, et eſt eins p diſcent, vncore en ceſt caſe ieo puiſſe bien diſtreigner le Tenant en le taile, et ſes heires, pur le rent p moy reſerue ſur le done, ſ, auxy bien pur le rent eſteant aderere deuant le diſcent al heire le Diſſeiſor, et auxy pur le rẽt que happa deſtre aderere apres meſme le diſcent, nient obſtant tiel mortẽ ſeiſi dl diſſeiſor, &c. Et la cauſe ẽ, pur ceo que quant home dona tenements en le taile, ſauant le reuerſion a luy, et il ſur le dit done reſerua a luy vn Rent ou auters ſeruices, tout le rent et les ſeruices ſont incidents a la reuerſion, et quant vn home ad vn reuerſion, il ne puiſſoit eſtre ouſte d ſon reuerſion per le fait dun eſtrange home, ſinon que le tenant ſoit ouſte de ſon eſtate et poſſeſſion, &c. car ſi longement que le Tenant en le Taile & ſes heirs continuont lour poſſeſſion p force de mon done, cy longement eſt le reuerſion en moy et en mes hẽs, et entant que le rent et les ſeruices reſerues ſur tiel done ſont incidents et dependants al reuerſiõ, quecunque que ad le reuerſion, auera meſme le Rent et Seruices, &c.

another in Taile, yielding to me and to my Heirs a certain Rent, &c. if in this caſe I be diſſeiſed of the Mannor, and all the Tenaunts attorne and pay their rents to the Diſſeiſor, and alſo the ſaid Tenant in Taile pay the Rent by me reſerved, to the Diſſeiſor, and after the Diſſeiſor dieth ſeiſed, &c. and his heir enter and is in by Diſcent, yet in this caſe I may well diſtreyne the Tenant in Taile and his heirs, by the rent by me reſerved upon the Gift, *&c.* as well for the Rent being behind before the diſcent to the heir of the Diſſeiſor, as alſo for the rent which happeth to be behind after the ſame diſcent, notwithſtanding ſuch dying ſeiſed of the Diſſeiſor, &c. And the reaſon is, for that when a man giveth lands in Taile, ſaving the reverſion to himſelf, and he upon the ſaid gift reſerveth to himſelf a Rent or other ſervices, all the rent and Services are incident to the Reverſion, and when a man hath a Reverſion he cannot be ouſted of his Reverſion by the act of a Stranger, unleſs that the Tenaunt be ouſted of his eſtate and poſſeſſion, &c. For as long as the Tenant in taile and his Heirs continue their poſſeſſion by force of my gift, ſo long is the reverſion in me and in my Heirs: and in as much as the rent and ſervices reſerved upon ſuch gift, be incident and depending upon the reverſion, whoſoever hath the Reverſion, ſhall have the ſame Rent and Seruices, &c.

Sect.

Sect. 591.

¶ En meſme le maner, eſt, ſou ieo leſſa parcel del demeſn̄ del manoꝛ a un auter pur terme de vie, ou p̄ terme dans, rendant a moy certaine rent, &c. coment que ieo ſoy diſſeiſie del manoꝛ, &c. et le diſſeiſoꝛ moꝛuſt ſeiſie, &c. et ſon heiꝛ eſteant eins per diſcent, vncoꝛe ieo diſtreiner pur le rent arere ut ſupra, nient obſtant tiel diſcent. Car quant home ad fait tiel done en taile, ou tiel leas pur terme de vie, ou pur terme dans del parcel de le demeſne de vn manoꝛ, &c. ſauant le reuerſion a tiel donour ou leſſour, &c. et puis il ſoit diſſeiſie de le manoꝛ, &c. tiel reuerſion apꝛes tiel diſſeiſin eſt ſeuer del manoꝛ en fait, coment que ne ſoit ſeuer en dꝛoit. Et iſſint poyes veier (mon fits) diuerſitie, ſou il y ad vn Manoꝛ parcel en demeſne & parcel en ſeruices, les queux ſeruices ſont parcel de meſne le manoꝛ nient incidents a aſcun reuerſion, &c. & ſou ils ſont incidents al reuerſion, &c.

IN the ſame manner it is, where I let parcel of the demeſnes of the Mannor to another for terme of life or for terme of years, rendring to me a certain rent, &c. albeit I be diſſeiſed of the Mannor, &c. and the diſſeiſor die ſeiſed, &c. and his heir be in by diſcent, yet I may diſtreine for the rent arere *ut ſupra*, notwithſtanding ſuch diſcent, for when a man hath made ſuch a gift in tail, or ſuch a leaſe for life or for years of parcel of the demeſnes of a mannor, &c. ſaving the reverſion to ſuch donor or leſſor, &c. And after he is diſſeiſed of the mannor, &c. ſuch reverſion after ſuch diſſeiſin is ſevered from the mannor in deed, though it be not ſevered in right. And ſo thou mayſt ſee (my ſon) a diverſity, where there is a Mannor parcel in Demeſne and parcel in Services, which Services are parcel of the ſame Mannor not incident to any Reverſion, &c. And where they are incident to the Reverſion, &c.

¶ HEre Littleton putteth a diverſity betweẽn Rents and Serbices parcel of a Manoꝛ (whereof he had ſpoken beſoꝛe) and Rents and Serbices incident to a Reberſion parcel of a Mannoꝛ.

And the reaſon of this diberſity is foꝛ that as long as the Donee in taile, Leſſee foꝛ life, oꝛ Leſſee foꝛ years, are in poſſeſſion, they pꝛeſerbe the Reberſion in the Donoꝛ oꝛ Leſſoꝛ, and ſo long as the Reberſion continue in the Donoꝛ oꝛ Leſſoꝛ, ſo long do the Rents and Serbices which are incident to the Reberſion belong to the Donoꝛ oꝛ Leſſoꝛ. Neither can the Donoꝛ oꝛ Leſſoꝛ be put out of his Reberſion unleſs the Donee oꝛ Leſſee be put out of their poſſeſſion, and if the Donee oꝛ Leſſee be put out of their poſſeſſion, then conſequently is the Donoꝛ oꝛ Leſſoꝛ put out of their Reberſion. But if the Donee oꝛ Leſſee make a regreſs and regain their eſtate and poſſeſſion, thereby they do ipſo facto reveſt the Reberſion in the Donoꝛ oꝛ Leſſoꝛ.

(a) 18.Aſſ.p.2.38.H.6.33 Pl.Com.Fulmerſtones caſe. 103. Lib.5.fol.11,12 25. 19.E.2.Briefe 845. 4.E.3.Briefe 713.

And here is to be obſeꝛbed, that when a man is ſeiſed of a Mannoꝛ, and maketh a gift in tail, oꝛ leaſe foꝛ life, &c. of parcel of the Demeſne of the Mannoꝛ, (a) the Reberſion is part of the Mannoꝛ, and by the grant of the Mannoꝛ the Reberſion ſhall paſſe with the Attoꝛnement of the Donee oꝛ Leſſee. But if the Loꝛd make a gift in tail, oꝛ a leaſe foꝛ life of the whole Mannoꝛ, excepting black Acre parcel of the Demeſnes of the Mannoꝛ, and after he granteth away his Mannoꝛ, black Acre ſhall not paſs, becauſe during the eſtate tail oꝛ leaſe foꝛ life

life it is ſevered from the Mannor. And ſo note a diverſity, that a Reverſion of part may be parcel of a Mannor in poſſeſſion, but a part in poſſeſſion cannot be parcel of the Reverſion of a Mannor expectant upon any eſtate of Freehold. But if a man make a Leaſe for years of a Mannor, excepting black Acre, and after granteth away the Mannor, black Acre ſhall paſſe, becauſe the Freehold being entire, it remaineth parcel of the Mannor, and one Præcipe of the whole Mannor ſhall ſerve. But otherwiſe it is in caſe of the gift in taile or leaſe for life excepting any part, there muſt be ſeveral Writs of Præcipe, becauſe the Freehold is ſeveral.

Chap. II. Of Diſcontinuance. *Sect.* 592.

¶ Diſcontinuance eſt vn ancient parol en la ley, & ad diuers ſignifications, &c. Mes quant a vn entent, il ad tiel ſignification, ſ. lou vn home ad alien a vn auter certaine terres ou tenements & mort, et vn auter ad droit de auer meſmes les terres ou tenements, mes il ne poit entrer en eux per cauſe de tiel alienation, &c.

Diſcontinuance is an ancient word in the Law, and hath divers ſignifications, &c. But as to one intent it hath this ſignification, *viz.* where a man hath alienated to another certain lands or Tenements and dieth, and another hath right to have the ſame Lands or Tenements, but he may not enter into them becauſe of ſuch an alienation, &c.

¶ *Diſcontinuance* is a word compounded of de and continuo, for continuare is to continue without intermiſſion. Now by addition of de (Euphomæ gratia dis to it,) which is privative, it ſignifieth an intermiſſion. Diſcontinuare nihil aliud ſignificat quam intermittere, deſueſcere, interrumpere. And as our Author ſaith, (a) it is a very ancient word in Law. Vide Sect. 637. (a) 8.H.4.8.b. 11.H.4. 85.b.

A diſcontinuance of eſtates in Lands or Tenements is properly (in legal underſtanding) an alienation made or ſuffered by Tenant in taile, or by any that is ſeiſed in auter droit, whereby the iſſue in tail, or the heire or ſucceſſor, or thoſe in Reverſion or Remainder, are driven to their Action and cannot enter.

All which is implied by the deſcription of our Author, and by the (&c.) in the end of this Section.

I have added (properly) by good warrant of our Author himſelf, for Sectione 470. he ſaith Diſcontinuance for a deveſting or diſplacing of a Reverſion, though the entrie be not taken away.

This Diſcontinuance conſiſteth in doing or ſuffering an Act to be done, as hereafter ſhall appear. And where our Author ſaith, that it hath divers ſignifications, there is alſo a Diſcontinuance of Proceſſe conſiſting in not doing, where the Proceſſe is not continued, concerning which there is an excellent Statute made in furtherance of Juſtice in (b) 1.E.6. and is well expounded in my Reports, and therefore need not here to be inſerted. (b) Vide the Statutes of 1.E.6.ca.7.& 31.Eliz.c.1. Lib.7.f.30,31.&c.le caſe. de diſcontinuance de proces.

There is another erroneous proceeding, and that conſiſteth in miſdoing, as when one Proceſs is awarded in ſtead of another, or when a day is given which is not legal, this is called a miſcontinuance, and if the Tenant or Defendant make default, it is error, but if he appear, then the miſcontinuance is ſalved, otherwiſe it is of a Diſcontinuance. But let us return to the Diſcontinuance of Eſtates in Lands, whereof Littleton doth entreat in this Chapter. 39.E.3.7.a.46.E.3.30. 37.H.6. 25,26. 9.E.4.18.12.E.4.

¶ *Significations.* Here (as in many other places) it appeareth how neceſſary it is to know the ſignification of words. Vide Sect.74.174.194. 441.520.

And in this Chapter it appeareth, that when Littleton wrote, the Eſtate in Lands and Tenements might have been diſcontinued five manner of wayes, viz. by Feoffment, by Fine, by Releaſe with Warrantie, Confirmation with Warrantie, and by ſuffering of a Recovery in a

Præcipe quod reddat. And this was to the prejudice of five kinds of perſons, viz. of Wives, of Heirs, of Succeſſors, of thoſe in Reverſion, and of thoſe in Remainder. But for Wives, and their Heirs, and for Succeſſors the Law is altered by Acts of Parliament ſince Littleton wrote, as in this Chapter in their proper places ſhall appear.

Sect. 593.

¶ HEre Littleton putteth an example of a Diſcontinuance made by one ſeiſed in auter droit, as by an Abbot who had a fee ſimple in the right of his Monaſtery, and therefore his Alienation without the aſſent of his Covent had been a Diſcontinuance at the Common Law, and had driven his Succeſſor to a Writ De Ingreſſu ſine aſſenſu capituli.

Regiſtr. Orig. fol. 230. F.N.B. 195. Bracton li. 4. fol. 323. Fleta lib. 5. ca. 34

¶ De Ingreſſu ſine aſſenſu Capituli, &c. It is called ſo becauſe the Alienation was ſine aſſenſu capituli, for if it had been cum aſſenſu capituli, it ſhould have been a barre to the Succeſſor. And becauſe the Succeſſor could not enter, the Common Law gave him this Writ, and is ſo called of theſe words contained in the Writ, which Writ you may read in the Regiſter and Fitzherberts N.B.

21. E. 4. 86.

And here is to be noted, that in Law the Covent, albeit they be regular and dead perſons in Law, yet are they ſaid in Law to be Capitulum to the Abbot, as well as the Dean and Chapter, that be Secular to the Biſhop. But it is to be obſerved and implied in this (and) that, a ſole body politick that hath the abſolute right in them, as an Abbot, Biſhop, and the like may make a Diſcontinuance, but a Corporation aggregate of many, as Dean and Chapiter, Warden and Chaplains, Maſter and Fellows, Major and Comminaltie, &c. cannot make any Diſcontinuance, for if they joyn the Grant is good, and if the Dean, Warden, Maſter, or Major make it alone where the body is aggregate of many, it is void, and worketh a diſſeiſin. But now (as hath been ſaid) by the Statute of 27. H. 8. and 31. H. 8. all the Abbots, Priors, and other Religious perſons are ſo diſſolved, as there be none remaining this day, and by the Statutes of 1. Eliz. and 13. Eliz. cap. 10. and 1. Jac. cap. 3. Biſhops and all other Eccleſiaſtical perſons are diſabled to alien or diſcontinue any of their Eccleſiaſtical Livings, as by the ſame Acts doth appear.

See more of this matter hereafter in this Chapter Sect. 648. and before Sect. 528.

¶ SI come un Abbe ſeiſie de certaine terres ou tenements en fee, & alienast meſmes les terres ou tenements a un auter en fee, ou en fee taile, ou pur terme de vie, & puis labbe mourust, ſon ſucceſſor ne poit enter en les dits terres ou tenemẽts, coment que il ad droit eux auer come en droit de ſon meaſon, mes il eſt mis a ſon action de recouerer meſmes l'es terres ou tenements quel eſt appelle, Breve de ingreſſu ſine aſſenſu capituli, &c.

AS if an Abbot be ſeiſed of certain Lands or Tenements in fee, and alieneth the ſame Lands or Tenements to another in fee or in fee taile or for terme of life, and after the Abbot dieth, his Succeſſor cannot enter into the ſaid Lands or Tenements, albeit he hath right to have them as in right of his houſe, but he is put to his action to recover the ſame Lands or Tenements, which is called a Writ, *Breve de ingreſſu ſine aſſenſu capituli, &c.*

Sect. 594.

¶ EN droit ſa feme, *&c.* That is to ſay, in Fee ſimple, Fee taile,

¶ Item, ſi home ſeiſie de terre come en droit de

ALſo if a man be ſeiſed of Land as in right of his

de la feme, &c. enter eſteoffa vn auter, &c. z mozuſt, la feme ne puit enter, mes eſt mis a ſon action, le quel eſt appel Cui in vita, &c.

wife, &c. and thereof infeoffe another, &c. and dieth, the Wife may not enter, but is put to her Action, the which is called, *Cui in vita, &c.*

oz foz life. Here Littleton puteth another caſe where a man is ſeiſed in auter droit, and may make a Diſcontinuance, as the husband ſeiſed in the right of his wife, and therefore the Common Law gave her a Cui in vita, and her heire a Sur cui in vita, becauſe they could not enter. But this is altered ſince our Author wrote, by the Statute of 32. H. 8. by the purview of which Statute, the wife and her heires after the deceaſe of her husband may enter into the Lands oz Tenements of the wife, notwithſtanding the alienation of her husband.

Bracton lib. 4 f. 302. & 22 & 224. Fleta lib. 5. ca. 32. & 35. F.N.B. 193. Regiſt. 32. H. 8. cap. 28.

And here is one of the alienations to make a Diſcontinuance, viz. a feoffment, and where our Author ſpeaketh of a husband ſeiſed in the right of his wife, ſo it is, where the husband and wife are joyntly ſeiſed to them and their heires of an eſtate made during the Coverture, and the husband make a feoffment in fee, and dieth, the wife now may enter within that Statute, although it was the Inheritance of them both. And ſo it is if the feoffment be made by the husband and wife, (albeit the words of the Statute be by the husband only) foz in ſubſtance this is the act of the husband only.

Dier. 4. & 5. Ph. & Marie. 146. 3. Eliz. Dier. 191. Lib. 8. fol. 71, 72. Greneleyes caſe.

If the husband cauſe a Præcipe quod reddat upon a faint title to be brought againſt him and his wife, and ſuffereth a recovery without any Voucher, and Execution to be had againſt him and his wife, yet this is holpen by the Statute, foz this by like conſtruction is the act of the husband, and the words of the Statute be, made, ſuffered, oz done.

Greneleyes caſe ubi ſupra.

If the husband make a feoffment in fee of the Lands which he holdeth in the right of his wife, and after they are divorced Cauſa præ contractus, yet the woman may enter within the purview of that Statute, and is not driven to her Writ of Cui ante divortium, as ſhe was at the Common Law, albeit the entrie be by the Statute given to the wife, and now upon the matter ſhe was never his lawful wife. But it ſufficeth that ſhe was his wife de facto at the time of the alienation, and where her husband dieth ſhe cannot be his wife at the time of the Writ.

If the husband levie a fine with Proclamations, and dieth, the wife muſt enter oz avoid the Eſtate of the Conuſee within five years, oz elſe ſhe is barred foz ever by the Statute of 4. H. 7. foz the Statute of 32. H. 8. doth help the Diſcontinuance but not the barre, and the Statute ſpeaketh of a fine, and not of a fine with Proclamations.

6. E. 6. Dier. 72. b. 4. H. 7. c. 24.

If lands be given to the husband and wife, and to the heires of their two bodies, and the husband maketh a feoffment in fee and dieth, the wife is holpen by the ſaid Statute, as hath been ſaid, and ſo is the iſſue of both their bodies. Feme tenant in taile taketh husband, the husband maketh a feoffment in fee, the wife before entry dieth without iſſue, he in the Reverſion oz Remainder may enter. Foz firſt the Reverſion or Remainder cannot be diſcontinued in this caſe, becauſe the eſtate taile is not diſcontinued. Secondly, the words of the Statute be, Shall not be prejudicial or hurtful to the wife or her heirs, or ſuch as ſhall have right, title or intereſt by the death of ſuch wife, but that the ſame wife and her heirs, and ſuch other to whom ſuch right ſhall appertain after her deceaſe, ſhall or lawfully may enter into all ſuch Mannors, Lands, &c. according to their rights and titles therein: by which words the entrie of him in the Reverſion oz Remainder in that caſe is preſerved. The husband is Tenant in taile, the remainder to the wife in taile, the husband make a feoffment in fee, by this the husband by the Common Law did not only diſcontinue his own eſtate taile, but his wifes remainder: but at this day after the death of the husband without iſſue, the wife may enter by the ſaid Act of 32. H. 8. If the husband hath iſſue, and maketh a feoffment in fee of his wifes Land, and the wife dieth, the heire of the wife ſhall not enter during the husbands life, neither by the Common Law nor by the Statute.

Greneleyes caſe ubi ſupra. Paſch. 7. Jac.

8. E. 2 tit. Cui in vita 38. 34. E. 1. ibid. 30. 10. E. 3. 12. Dier 31. Eliz. 363.

¶ Cui in vita, &c. Here is alſo implied a Sur cui in vita, alſo foz the heir this Writ here mentioned in our Author is ſo called of thoſe words contained in the Writ, which you may read in the Regiſter and Fitzherberts N. B.

Sect. 595.

¶ *Enfeoffa vn auter, &c.* Here is implied, or make a gift in taile or an eſtate for life. Here Littleton putteth a third example of a Diſcontinuance made by Tenant in taile ſo as his iſſue is put to his Formedon in the Diſcender, which is given to the iſſue in taile by the Statute of 13. E. 1. cap. 1. becauſe he cannot enter.

Fleta lib. 5. cap. 34. F.N.B. 211, 212. Regiſtr.

¶ *Tenant en taile.* This extendeth as well to a woman Tenant in taile as to a man, and was generally good Law when Littleton wrote, but now by the Statute of (d) 11. H. 7. if the woman hath any eſtate in taile joyntly with her husband, or only to her ſelfe or to her uſe in any Lands or Hereditaments of the inheritance or purchaſe of her husband, or given to the husband and wife in taile by any of the Ancestors of the husband, or by any other perſon ſeiled to the uſe of the husband or his Ancestors, and ſhall hereafter being ſole or with any other after taken husband diſcontinue, &c. the ſame: every ſuch Diſcontinuance ſhall be void, and that it ſhall be lawful for every perſon to whom the intereſt, title, or inheritance, after the decaſe of the ſaid woman ſhould appertaine, to enter, &c. So as if ſuch a feme Tenant intaile do make any Diſcontinuance in fee, in taile, or for life, although it be without warranty, yet this doth not take away the entry after her death, either of the iſſue or of him in reverſion or remainder. This Statute hath been excellently expounded by divers reſolutions and judgements (e) which I have quoted in the margent, and are worthy of the obſervation.

(d) 11. H. 7. cap. 20. Vide Sect. 697.

(e) Lib. 3. fol. 50, 51. Sir George Brownes Caſe eodem lib. fol. 60. &c. Line. Coll. caſe. lib. 1. f. 176. Mildemayes caſe. Dier. 3. & 4. Ph. & Mar. 146. idem 8. Eliz. 248. 17. Eliz. 340. idem 19. Eliz. 354. idem 20. Eliz. 362. 27. H. 8. 23. Lib. 5. fol. 79. Fitzh. caſe. Lib. 8. fol. 71, 72. Greneleyes caſe.

If lands were entailed to a man and to his wife, and to the heires of their two bodies, and the husband had made a Feoffment in fee and died, and then the wife died, this had been no diſcontinuance at the Common Law: for the title of the iſſue is as heire of both their bodies, and not as heire to any one of them, and his entrie muſt enſue his title or action.

¶ *De formedon.* De forma donationis, Is called becauſe the writ doth comprehend the forme of the gift. And there be three kinde of writs of Formedon, viz. The firſt is the Diſcender to be brought by the iſſue in taile, which claims by diſcent Per formam doni. The ſecond is in the Reverter, which lieth for him in the reverſion or his heires or Aſſignes after the taile be ſpent. The third is the Remainder, which the Law giveth to him in the remainder, his heires or Aſſignes after the determination of the eſtate taile, of all which you may reade in the Regiſter and F. N. B.

Here Littleton ſheweth that the iſſue in taile ſhall have a Formedon in the Diſcender. What other eſtates Tenant in taile may have, and not have, is good to be knowne.

(a) 4. E. 3. 38. 43. E. 3. 25. 4. E. 4. 25. F.N.B. 124.
(b) 2. E. 2. Droit. 28.
(c) F. N. B. 123.
(d) 21. E. 3. 11. 5. E. 3. 23. 21. H. 4. 49.
(e) 2. E. 3. Droit. 28. 13. H. 7. 24. 5. E. 4. 2. 20. E. 3. Avowrie 131. F.N.B. 10. 46. E. 3 tit. Cui in vita. 33.

(a) Tenant for life ſhall have a Quod permittat.
(b) Tenant in taile ſhall have a writ of Coſtomes and Services In le debet, & ſolet, but ſhall not have it in the Debet only.
(c) In this manner he ſhall have a Secta ad molendinum in le debet & ſolet, but not in the Debet tantum.
(d) Tenant in taile ſhall have a writ of Entre in conſimili caſu and an Admeaſurement, and a Nativo habendo, Ceſſavit, Eſcheat, Waſte, and the like.
(e) But tenant in taile ſhall not have a writ of Right Sur diſclaimer, nor a Quo jure, nor a Ne injuſte vexes, nor a Nuper obiit, or Rationabile parte, nor a Mordancester, nor a Sur cui in vita, for theſe and the like none but Tenant in fee ſhall have: and the higheſt writ that a Tenant in taile can have is a Formedon.

ALſo if tenant in taile of certaine land, thereof enfeoffe another, &c. and hath iſſue and dieth, his iſſue may not enter into the land albeit he hath title and right to this, but is put to his action which is called a *Formedon in le diſcender, &c.*

¶ Item, ſi tenn en taile de certaine terre ent enfeoffa vn auter, &c. et ad iſſue et morust, ſon iſſue ne poit pas enter, en la terr̃ coment que il ad title et droit a ceo, mes eſt mis a ſon action que eſt appel Formedon en le diſcender, &c.

Sect. 596, 597.

ITem, ſi ſoit teñ en le taile, l'reuerſion eſteant al donor et a les heires, ſi le tenant fait feoffment, &c. et morust ſans iſſue, celuy en le reuerſion ne poit enter, mes eſt mis a ſon action de Formedon en le reuerter.

ALſo if there be tenant intaile, the reuerſion being to the Donor and his heires, if the Tenant make a feoffment, &c. and die without iſſue, he in the reverſion cannot enter, but is put to his action of *Formedõ en le reuerter.*

Sect. 597.

EN meſme l' maner eſt, lou tenãt en le taile ſeiſie de certaine terre dont le remainder eſt a vn auter en le taile, ou a vn autr en fée. Sil le tenant en le taile alienaſt en fé, ou en fée taile, et puis deuiaſt ſans iſſe, ceux en le remainder ne poiẽt enter, mes ſont mis a lour briefe de Formedon en le remainder, &c. et pur ceo que per force de tiels feoffments et alyenations en les caſes auant dits, & en ſemblables caſes, ceux queux ont title et droit apres la mort d' tiel feoffour ou alienour, ne poient pas enter, mes ſont miſes a lour actions Ut ſupra, et p̃ ceo cauſe tiels feoffments et alienations ſont appels diſcontinuances.

IN the ſame manner is it, where tenant in taile is ſeiſed of certaine land whereof the remainder is to another in taile, or to another in fee. If the tenant in taile alien in fee, or in fee-taile, and after die without iſſue, they in the remainder may not enter, but are put to their writ of *Formedon* in the remainder, &c. and for that that by force of ſuch feoffments and alienations in the caſes aforeſaid, and the like caſes, they that have title and right after the death of ſuch a feoffor or alienor may not enter, but are put to their actions, *Ut ſupra*, and for this cauſe ſuch feoffments and alienations are called diſcontinuances.

FAit feoffment, &c. Here is implied *Fé* ſimple, *Fé* taile, or eſtate for life, and in this and the next Section Littleton putteth two caſes, where if the iſſues in taile faile, they in the reverſion and remainder are driven to their Formedon in reverſion or remainder, and this remaineth as it was when Littleton wrote, nor altered by any Statute. And the reaſon whereof theſe Alienations in the ſeveral caſes in this and the next Section do make a Diſcontinuance, and put him in the reverſion or remainder that right had to his Action, and took away his entry, was for that he was privy in eſtate, and for the benefit of the poſſeſſion, and for the due guard of his Warrantie, ſo as every mans right might be preſerved, viz. to the Demandant for his ancient right, and to the Tenant for the benefit of his warrantie, which was founded upon great reaſon and equitie, which benefit of the warrantie ſhould be prevented and endamaged the entrie of him that right had ſuere lawful, and therby alſo the danger that many times happeneth by taking of poſſeſſions was warily prevented by Law. But then it may be demanded, ſeeing that there was no reverſion or remainder exiſtant upon any eſtate taile at the Common Law, nor the iſſue in taile had any remedy by the Common Law, if the Tenant in taile had aliened, then by what Law is the alienation of Tenant in taile a Diſcontinuance at this day to the iſſue in taile, or to him in reverſion or remainder? whereunto it is thus anſwered,

Vide Sect. 592. 597. 602, 637, 638.

30. E. 1. Formedon 65. 19. E. 2. Formedon 61. 18. E. 3. 46. 12. E. 4. 3.

ſwered, That it is prouided by the Statute of W. 2. ca. 1. De donis conditionalibus, quod non habeant illi quibus tenementum hic fuerit datum poteſtatem alienandi, &c. Upon theſe words the Sages of the Law haue conſtrued the ſaid Act according to the rule and reaſon of the Common Law, and that in diuers and ſundry variable manners. For ſome Alienations of Tenant in taile, they haue adiudged voidably by the Iſſue in taile by action only: ſome as the election of the Iſſue taile to auoid it by Action, Entry, or Claime: ſome are meerly void by the death of the Tenant in taile: which ſeuerall Conſtructions were made upon the ſelfe ſame words aforeſaid.

18.E.3.12.19.E.3.Ere. 468.24.E.3.28 36.Aſſ.8. 22.R.2.Diſcon. 5.E.4 3. 4.H.7.17.33.E.3 Formedon & 13.7.Pl.Com. Smith & Stapletons caſe.

As for example, If Tenant in taile make a Feoffment in fee, this driues the Iſſue in taile to his Action, which is called in Law a Diſcontinuance, and this Conſtruction was made, for that at the Common Law the Feoffment of an Abbot or Biſhop, or of the husband ſeiſed in the right of his wife, did worke a Diſcontinuance, and did driue the Succeſſor and the wife to their Action, and forecloſed them of their Entrie: and as the Entrie of the Iſſue was taken away, ſo conſequently of them in reuerſion and remainder. Alſo if an Abbot, Biſhop, or Husband in the right of his wife, ſeiſed of a Rent, or of any other Inheritance that lieth in Grant, had aliened, it was in the election of the Succeſſor or wife after the death of her husband to claime the rent, &c. or to bring an Action, for that alienation did not worke a Diſcontinuance, and ſo it is by conſtruction in caſe of Tenant in Taile. Laſtly, if the Abbot, Biſhop, or Husband, had granted a Rent newly created out of the land, &c. to another in fee, this had vtterly ceaſed by their death; and ſo it is alſo by conſtruction in caſe of Tenant in Taile. So as theſe words (Non habent poteſtatem alienandi) do worke theſe effects, viz. as to Lands, That a Feoffment barreth not the Iſſue, &c. of his Action, but worketh a Diſcontinuance to barre him of his Entrie: as to Rents or any thing in eſſe, that lie in grant, that the ſaid words do take away his power to make any Diſcontinuance: as to Rents, &c. newly created, that they take away his power to make them to continue longer than during his life.

But there is a diuerſitie betweẽ an Alienation working a diſcontinuance of an eſtate which taketh away an entry, and an alienation working, diueſting or diſplacing of Eſtates which taketh away no entry. As if there be Tenant for life, the remainder to A. in Taile, the remainder to B. in fee, if Tenant for life doth alien in Fee, this doth diueſt and diſplace the remainders, but worketh no diſcontinuance. And therein it is to be obſerued, That to euery Diſcontinuance there is neceſſary a diueſting, or diſplacing of the Eſtate, and turning the ſame to a right: for if it be not turned to a right, they that haue the Eſtate cannot be driuen to an Action. And that is the reaſon that ſuch Inheritances as lie in Grant, cannot by Grant be diſcontinued, becauſe ſuch a Grant diueſteth no Eſtate, but paſſeth only that which he may lawfully grant, and ſo the eſtate it ſelfe doth deſcend, reuert, or remaine, as ſhall be ſaid hereafter in this Chapter.

A. maketh a gift in Taile to B. who maketh a gift in Taile to C. C. maketh a Feoffment in Fee and dieth without Iſſue, B hath Iſſue and dieth, the Iſſue of B. ſhall enter, for albeit the Feoffment of C. did diſcontinue the reuerſion of the Fee ſimple which B. had gained upon the Eſtate taile made to C. yet could it not diſcontinue the right of Intaile which B. had, which was diſcontinued before: and therefore when C. died without Iſſue, then did the diſcontinuance of the eſtate Taile of B. which paſſed by his Liuery, ceaſe, and conſequently the entrie of the Iſſue of B. lawful, which caſe may open the reaſon of many other caſes.

Alſo note, That a Diſcontinuance made by the husband, did take away the entrie only of the wife and her heires by the Common Law, and not of any other which claimed by title paramount abode the Diſcontinuance. As if Lands had ben given to the husband and wife, and to a third perſon, and to their heires, and the husband had made a Feoffment in fee, this had ben a diſcontinuance of the one moity, and a diſſeiſin of the other moity: if the husband had died, and then the wife had died, the ſurdiuor ſhould haue entred into the whole, for he claimed not vnder the diſcontinuance, but by title paramount from the firſt Feoffor, and being the right by Law doth ſurvive, the Law doth giue him a remedy to take aduantage therof by entry, for other remedy for that moity he could not haue.

¶ *Fee, ou Fee taile.* And ſo it is of an eſtate for life.

Sect. 598, 599, 600.

¶ ITem, ſi Tenant en Taile, ſoit diſſeiſie, et il releſſa per ſon

ALſo if Tenant in Taile be diſſeiſed, and he releaſe by his

ſon fait a le Diſſeiſor, et a ſes heires tout le droit, le quel il ad en meſme les tenements, ceo ne pas diſcontinuance, pur ceo que rien de droit paſſa al Diſſeiſor forſque pur terme vie de del tenant en le Taile que fiſt le Releaſe, &c.

Deed to the Diſſeiſour and to his heires all the right which he hath in the ſame Tenements, this is no diſcontinuance, for that nothing of the right paſſeth to the Diſſeiſor, but for terme of the life of tenant in Taile, which made the releaſe, &c.

Sect. 599.

¶ MEs per feoffment del tenant en le Taile, fee ſimple paſſa per meſme le feoffement per force de Liuerie de ſeiſin, &c.

BUt by the Feoffment of Tenant in Taile, Fee ſimple paſſeth by the ſame Feoffement by force of the Livery of Seiſin, &c.

Sect. 600.

¶ MEs per force dun releaſe rien paſſera forſque le droit que il poet loyalm̃t, & droiturelment releſſer, ſans leyó ou damage as auters perſons q̃ux ent aueront droit apres ſon deceaſe, &c. Iſſint il eſt graund diuerſity parenter vn Feoffement dun tenant en le taile, et vn Releaſe fait per tenant en le taile.

BUt by force of a Releaſe nothing ſhall paſs but the right which he may lawfully and rightfully releaſe, without hurt or damage to other perſons who ſhall have right therein after his deceaſe, &c. So there is great diverſity between a Feoffement of Tenant in Taile, and a releaſe made by Tenant in Taile.

¶ OVr Author having put examples of Eſtates, paſſing by tranſmutation of an Eſtate and poſſeſſion, doth in this and the two Sections following put a diverſity between a Feoffment and a releaſe or confirmation of a bare right: for it is a rule in Law, That the Diſſeiſee or any other that hath a right only by his Releaſe or Confirmation, cannot make any diſcontinuance, becauſe nothing can paſſe thereby but that which may lawfully paſſe. But otherwiſe it is of a Feoffment in reſpect of the Livery of Seiſin, for that it is the moſt ſolemn and common aſſurance in the Country, and to be maintained for the common quiet of the Realm: and by the Feoffment the Freehold (which is ſo much eſteemed in Law) doth paſſe by open Livery to the Feoffee, and by the releaſe a bare right. 9.E.4.18.11.E.4.11. 5.H.4.8.21.H.6.58.

Sect. 601.

¶ MEs il eſt dit, que ſi le tenant ẽ taile en ceſt cas releſſa a ſon diſſeiſor, et oblige luy et ſes hẽs

BUt it is ſaid, That if the Tenant in Taile in this caſe releaſe to his Diſſeiſor, and bind him and his heirs to Warran-

¶ THe reaſon why the addition of the warrantie (in this caſe maketh a Diſcontinuance, is that which hath been ſaid, viz. If the Iſſue in Taile ſhould enter, the warranty (which is ſo much favoured in 3.H.4.9.22.R.2.Diſcent. 5.12.E.4.11.21.H.7.9. 43.E.3.8.15.E.4.tit. Diſcent.30. Vide Sect. 596.602.637. 658.

in Law) ſhould be deſtroyed: and therefore to the end that it Affects in Fee ſimple do deſcend, he to whom the Releaſe is made, may plead the ſame, and barre the Demaundant: by which meanes all rights and advantages are ſaved. And that I may note it once for all, an (Il eſt dit) with Littleton, is as good as a Conceſſum in a Book caſe.

a Garrantie et mor, et ceſt a garranty diſcendiſt a ſon Iſſue, ceo eſt diſcontinuance per cauſe de le garrantie.

tie, and dieth, and this Warrantie deſcend to his Iſſue, this is a Diſcontinuance, by reaſon of the Warrantie.

Sect. 602.

¶ Mes ſi vn home ad Iſſue fits per ſa Feme, et ſa Feme morust, et puis il prent auter Feme, et tenements ſont dones a luy et a ſa ſecond Feme, et a les heires de lour deux corps engendres, et ils ont iſſue vn auter fits, et l' ſecond Feme morust, et puis le Tenant en le taile eſt diſſeiſie, et il releſſa al Diſſeiſor tout ſon droit, &c. & oblige luy & ſes heires a le garrantie, &c. et deuia, ceo neſt pas diſcontinuance al iſſue en le Taile per l' ſecond feme, mes il poit bien enter, pur ceo que le garrantie diſcendiſt a ſon eigne frere que ſon pier auoit per le primer feme, &c.

But if a man hath iſſue a Sonne by his Wife, and his Wife dieth, and after he taketh another wife, and Tenements are given to him and to his ſecond wife, and to the Heires of their two bodies engendred, and they have iſſue another ſonne, and the ſecond Wife dieth, and after the Tenant in taile is diſſeiſed, and he releaſe to the Diſſeiſor all his right, &c. and bind him and his heires to Warrantie, &c. and die, this is no Diſcontinuance to the Iſſue in Taile by the ſecond wife, but he may well enter, for that the Warrantie deſcendeth to his elder brother which his Father had by the firſt wife, &c.

Sect. 603.

¶ En meſme le manner eſt, lou tenements ſont diſcendable a le fits puiſne ſolonge le cuſtome de Burgh English, queux ſon entailes, &c. et le tenant en le taile ad deux fits, & eſt diſſeiſie, et il releſſa a ſon Diſſeiſor tout ſon droit oue garrantie, &c. et morust, le puiſne fits poit enter ſur le Diſſeiſor, nient obſtant le garrantie, pur ceo que le garrantie diſcendiſt al eigne fits, car touts foits le Garrantie

In the ſame manner is it, where Lands are deſcendible to the youngeſt ſonne after the Cuſtom of Burrough-Engliſh, which are entailed, &c. and the Tenaunt in Taile hath two ſonnes, and is diſſeiſed, and he releaſeth to his Diſſeiſour all his right with Warrantie, &c. and dieth, the younger ſonne may enter upon the Diſſeiſor notwithſtanding the Warranty, for that the Warrantie deſcendeth to the elder ſon: for alwayes the War-

tie discendera a celuy que est heir per le common ley.

rantie shall descend to him who is heire by the Common Law.

¶ By these two examples in this and the Section next following, it appeareth that a warranty being added to a release or Confirmation, and descending upon him that right hath to the Lands maketh a Discontinuance, otherwise it is out of the reason of the Law, and worketh no Discontinuance, if the warranty descendeth upon another.

¶ *One garrantie, &c.* Here is implied that he doth binde him and his heires to warrant to the releasee and his heires.

¶ *Tous fois le garrantie discendist sur le heire al Common ley.* This is a Maxim of the Common Law, and hereof more shall be said in the Chapter of warranty, Sections 718, 735, 736, 737. so as it is not the warranty only that maketh a Discontinuance, but the Warranty and the Discent upon him that right hath together. 13.H.4.Garrantie 94. 19.R.2.Garrantie 206.

Sect. 604.

¶ Item, si vn Abbe soit disseisie, & il relessa a le disseisor quelque garrantie, ceo nest pas discontinuance a son successor, pur ceo que rien passa per cel release, forsque le droit que il ad durant le temps que il est Abbe, & le Garrantie est expire per son priuation, ou per sa mort.

ALso if an Abbot be disseised and he releaseth to the disseisor with warrantie, this is no Discontinuance to his successor, because nothing passeth by this release but the right which he hath during the time that he is Abbot, and the Warrantie is expired by his privation, or by his death.

¶ The reason hereof yelded by Littleton is, for that the warranty is expired by his privation or death.

¶ *Per son priuation ou per sa mort.* Note, that privation is here resembled to death, and so is translation also, wherein this diversity is worthy of observation, that when a Bishop, &c. make an estate, lease, grant of a Rent charge, Warranty, or any other Act which may tend to the diminution of the revenues of the Bishoprick, &c. which should maintain the successor, there the privation or translation of the Bishop, &c. is all one with his death. But where the Bishop is Patron and Ordinary, and confirmeth a Lease made by the Parson without the Dean and Chapter, and after the Parson dieth, and the Bishop collateth another, and then is translated, yet his Confirmation remaineth good, for the Revenues that are to maintain the Successor are not thereby diminished. And the like diversity doth hold in case of resignation, notwithstanding (m) the authority to the contrary. Vide 29.E.3.16. (m) 29.E.3.16.tit. garrant. 99.

Sect. 605.

¶ Item, si home seisie en droit sa feme est disseisie, & il relessa, &c. oue garrantie, ceo nest pas discontinuance a la feme si el survesquist son baron, mes que el poit enter, &c. Causa patet.

ALso if a man seised in the right of his Wife be disseised, and he releaseth, &c. with warranty, this is no discontinuance to the wife if she surviveth her husband, but that she may enter, &c. *Causa patet.*

¶ This is evident, unless the wife be heire to the Husband (as by law she may be) and then it is a discontinuance for the cause aforesaid.

Sect. 606.

¶ Item, ſi tenant en taile de certaine terre, leſſa meſme la terre a vn auter pur term des ans, per force de quel le leſſé en eſt poſſeſſion, en quel poſſeſſion le tenant en taile per ſon fait releſſa tout le droit que il auoit en meſme le terre, a auer & tener a le leſſé & a ſes heires a touts iours, ceo neſt pas diſcontinuance, mes apres le deceaſe l'tenant en taile ſon iſſue poit bien enter, pur ceo que per tiel releaſe riens paſſa forſque pur terme de la vie de le tenant en le taile.

ALſo if Tenant in taile of certain Land letteth the ſame Land to another for terme of years, by force whereof the Leſſee hath thereof poſſeſſion, in whoſe poſſeſſion the Tenant in tail by his Deed releaſeth all the right that he hath in the ſame Land: To have and to hold to the Leſſee and to his heirs for ever; this is no diſcontinuance, but after the deceaſe of the Tenant in taile, his iſſue may well enter, becauſe by ſuch Releaſe nothing paſſeth but for terme of the life of the Tenant in tail.

¶ *Car per tiel releas riens paſſa.* Here is one of the maxims of the Common Law rehearſed by our Author, whereof he doth put divers examples hereafter.

Sect. 607.

¶ En meſme le manner eſt, ſi le tenant en le taile, confirma leſtate le leſſé pur terme des ans, a auer & tener a luy & a ſes heires, ceo neſt pas diſcontinuance, pur ceo que riens paſſa per tiel confirmation, forſque leſtate que le tenant en le taile auoit pur terme de ſa vie, &c.

IN the ſame manner it is, if the Tenant in tayle confirm the eſtate of the Leſſee for years: To have and to hold to him and to his heirs, this is no diſcontinuance, for that nothing paſſeth by ſuch Confirmation, but the eſtate which the Tenant in tayle hath for term of his life, &c.

¶ *Riens paſſa per tiel confirmation.* Here is another of the maxims of the Common Law rehearſed by our Author, whereof he putteth examples hereafter. More ſhall be ſaid hereof in the next Section following.

Sect. 608.

¶ Item, ſi tenant en taile apres tiel leas granta le reuerſion en fee per ſon fait a auter, & voile que

ALſo if tenant in tail after ſuch leaſe grant the reverſion in fee by his Deed to another, and wil-

que apres le terme fine, q̃ meſme le terre remaindroit a le grantée et a ſes heires a touts iours, & le tenant a term̃ dans atturna, ceo neſt pas diſcontinuance. Car tiels choſes queux paſſont en tiels caſes de tenant en le taile tantſolement per voy de graunt, ou per confirmation, ou per tiel releaſe, rien poit paſſer pur faire eſtate a celuy a que tiel graunt, ou confirmatiõ, ou releaſe eſt fait forſque ceo que le tenant en taile poit droiturelment faire, et ceo neſt forſque p̃ terme de ſa vie, &c.

leth that after the term ended, that the ſame land ſhall remain to the grantee and his heirs for ever, and the tenant for years attorne, this is no diſcontinuance. For ſuch things which paſſe in ſuch caſes of tenant in taile only by way of grant, or by confirmation or by ſuch releaſe, nothing can paſſe to make an eſtate to him to whom ſuch grant, or confirmation or releaſe is made, but that which the tenant in taile may rightfully make, and this is but for term of his life, &c.

Sect. 609.

CAr ſi ieo leſſa terre a vn hom̃ pur terme de ſa vie, &c. et le tenant a terme de vie leſſe meſm̃ la terre a vn auter pur terme des ans, &c. et puis mon tenant a terme de vie graunta le reuerſion a vn auter en fée, et le tenant a terme des ans atturna, en ceſt caſe le grantée nad en le franktenement forſq; eſtate pur terme de vie ſon grauntor, &c. & ieo que ſuis en le reuerſion de fée ſimple, ne puiſſe enter per force de cel grant del reverſion fait per mon tenant a terme de vie, pur ceo que per tiel grant mon reuerſion neſt pas diſcontinue, mes tout temps demurt a moy, ſicome il fuit adeuant, nient obſtant tiel grant del reuerſion fait al grantée a luy et a ſes heires, &c. pur ceo que riens paſſa per force de tiel grant forſque eſtate que le grantor auoit, &c.

FOr if I let land to a man for term of his life, &c. and the tenant for life letteth the ſame land to another for term of years, &c. and after my tenant for life grant the reverſion to another in fee, and the tenant for years attorne, in this caſe the grantee hath in the freehold but an eſtate for terme of the life of his grantor, &c. And I which am in the reverſion of the fee ſimple may not enter by force of this grant of the reverſion made by my tenant for life, for that by ſuch grant my reverſion is not diſcontinued, but alwayes remain unto me as it was before notwithſtanding ſuch grant of the reverſion made to the grantee, to him and to his heires, &c. becauſe nothing paſſed by force of ſuch grant, but the eſtate which the grantor hath, &c.

Sect. 610.

EN meſme le maner eſt, ſi le tenant a terme de vie, per ſon fait confirme leſtate ſon leſſé pur terme des ans, a auer et tener a luy et a ſes heires, ou releſſa a ſon leſſée et a ſes heires, vncore le leſſée a terme dans, nad eſtate forſque pur terme de vie de le tenant a terme de vie, &c.

IN the ſame manner is it, if tenant for terme of life by his Deed confirme the eſtate of his Leſſee for years, To have and to hold to him and his heires, or releaſe to his Leſſee and his heirs, yet the Leſſee for years hath an eſtate but for term of the life of the tenant for life, &c.

CAr tiels choſes que paſſont en tiels caſes de tenant en le taile, &c. Here is rehearſed another Ancient maxime of the Common Law touching Grants, and hereby it appeareth that a Feoffment in fee (albeit it be by Parol) is of a greater operation and eſtimation in Law, than a grant of a reverſion by Deed though it be enrolled and Attornement of the Leſſee for years of a releaſe, or a Confirmation by Deed for the reaſons aforeſaid. And this is manifeſted by the Examples which our Author here in theſe two Sections putteth.

Sect. 611.

FOrſque eſtate pur terme dans, &c. Here it is implied that albeit the feoffment made by Leſſee for years be a feoffment between the Feoffor and feoffee, and that by this feoffment the fee ſimple paſſeth by force of the livery, yet is it a diſſeiſin to the Leſſor. And here it is worthy to be obſerved, that our Author ſaith that Tenant for term of years may make a feoffment, whereupon it followeth, that the Feoffee may thereunto annex a Warrantie, whereupon the Feoffee may vouch him, but of this you ſhall read more in the Chapter of Warranties, Sect. 698.

MEs auterment eſt quant tenãt a terme de vie, fait vn feoffmẽt en fée, car per tiel feoffment le fée ſimple paſſa. Car tenant a termn dans poit faire feoffment en fée, et per ſon feoffment le fée ſimple paſſera, et vncore il nauoit al temps del feoffment fait forſque eſtate pur terme dans, &c.

BUt otherwiſe it is when tenant for life maketh a feoffment in fee, for by ſuch a feoffment the fee ſimple paſſeth. For tenant for years may make a feoffment in fee, and by his feoffment the fee ſimple ſhall paſs, and yet he had at the time of the feoffment made but an eſtate for term of years, &c.

Sect. 612.

ITem, ſi tenn en le taile grant a ſon terre a vn auter pur terme de vie de meſme le tenant en taile, et liuer a luy ſeiſin, &c. et apres per ſon fait il releſſa a le tenant et a ſes heires tout le droit

ALſo if tenant in taile grant his land to another for term of the life of the ſaid tenant in tail, and deliver to him ſeiſin, &c. and after by his Deed he releaſeth to the tenant and to his heirs all the

droit que il auoyt en meſme la terre, en ceſt cas leſtate del tenãt de la terre neſt pas enlarge per force de tiel releas, pur ceo que quant le tenant auoit leſtate en le terre pur terme de vie de le tenant en le taile, donque il auoit tout le droit que le tenant en le taile puiſſoit droiturement grãter ou releſſer, iſſint que per tiel releas nul droit paſſa, entant que ſon droit fuit ale deuant.

right which he hath in the ſame land, in this caſe the eſtate of the tenant of the land is not enlarged by force of ſuch releaſe, for that when the tenant had the eſtate in the land for term of the life of the tenant in taile, he had then all the right which tenant in taile could rightfully grant or releaſe. So as by this releaſe no right paſſeth, inaſmuch as his right was gone before.

Sect. 613.

¶ Item, ſi tenant en le taile per ſon fait grant a vn auter tout ſon eſtate que il auoit en les teñts a luy tailes, a auer et tener tout ſon eſtate al auter et a ſes heires a touts iours, et deliuera a luy ſeiſin accordant, en ceſt cas le tenant a que laliena-tion fuit fait, nad auter eſtate forſque pur terme de vie del tenant en taile, et iſſint il poit bien eſtre proue, que le tenant en taile ne poit pas graunter ne aliener, ne faire alcun droiturel eſtate de franktenement a auter perſon, forſque pur terme de ſa vie demeſne, &c.

ALſo if tenant in taile by his Deed grant to another all his eſtate which he hath in the tenements to him entailed, To have and to hold all his eſtate to the other, and to his heirs for ever, and deliver to him ſeiſin accordingly; in this caſe the tenant to whom the alienation was made hath no other eſtate but for term of the life of tenant in taile. And ſo it may be well proved, that tenant in taile cannot grant nor alien, nor make any rightful eſtate of freehold to another perſon, but for term of his own life only, &c.

¶ The meaning of Littleton in both theſe caſes, in this and in the Section next preceding is, that having regard to the iſſue in taile, and to them in reverſion or remainder, Tenant in taile cannot lawfully make a greater eſtate than for term of his life, and therefore this Releaſe or Grant is no Diſcontinuance. But in regard of himſelf this Releaſe or Grant leaveth no reverſion in him, but put the ſame in abeiance, ſo as after this Releaſe or Grant made he ſhall not have any action of waſte, &c. 13.H.7.10.2. Brooke Releaſe 93.

¶ *Grant tout ſon eſtate, Vid. Sect.* 650. Action of waſte, &c. there is implyed that he ſhall not enter for a forfeiture if after the Releaſe or Grant the Iſſue maketh a feoffment in fee.

Sect. 614.

¶ Car ſi ieo done Terre a vn home en taile, ſauant

FOr if I give land to a man in taile, ſaving the reverſiõ to my

¶ Here Littleton proveth, that the feoffee of Tenant in Taile hath no rightful eſtate having

having reſpect to two perſons, the one is to the Donor, whoſe reverſion is diveſted and diſplaced, and the other to the Iſſue in Taile, who is driven to his Action to recover his Right.

¶ *A tort luy deforce.*

(n) Bract. li. 4. fol. 238. Flet. lib. 5. cap. 11.

(n) Deforciare is a word of Art, and cannot be expreſſed by any other word, for it ſignifieth, to with-hold lands or tenements from the right owner, in which caſe either the entrie of the right owner is taken away, or the Deforceor holdeth it ſo faſt, as the right owner is driven to his real Præcipe, wherein it is ſaid, Unde A. cum injuſtè deforceat, or the Deforceor ſo diſturbeth the right owner, as he cannot enjoy his own: and therefore it is ſaid, Per hoc autem quod dicitur in brevi ultimæ præſentationis deforceant, videtur quibuſdam quod querens innuat per hoc quod deforceans ſit in ſeiſina, ſicut in brevi de recto, ſed revera non eſt ita, ſed ſatis deforceat qui poſſeſſorem uti ſeiſina non permiſerit omninò vel minus commode impediat præſentando, appellando, impetrando ſecundum quod dicitur de diſſeiſitore, ſatis facit diſſeiſinam, qui uti non permiſit poſſeſſorem vel minus commode licet omninò non expellat. In this caſe that Littleton putteth, the Diſcontinuee being in by wrong, is no Diſſeiſor, Abator, or Intruder, but a Deforceor, and hereof cometh Deforcement, and thus did Antiquity deſcribe it: (o) Deforcement, come ſi aſcun enter en auter tenement tout come le veray Seignior eſt al Market, ou ailors, & retorne, & ne poet auer entre eins eſt celuy deforce & debotue. And for that at the firſt the withholding was with violence and force, it was called a deforcement of the Lands or Tenements, but now it generally extendeth to all kinds of wrongful withholding of Lands or Tenements from the right owner. There is a Writ called a Quod ei deforceat, and lieth where Tenant in Taile, or Tenant for life, loſeth by default, by the Statute he ſhall have a Quod ei deforceat againſt the Recoveror, and yet he cometh in by courſe of Law.

Bract. & Flet. ubi ſupra.

(o) Mir. cap. 2. Sect. 15.

Weſt. 2. cap. 4.

le reuerſion a moy, et puis le tenant en le Taile enfeoffa vn auter en fee, le feoffé nad pas droiturel eſtate en les tenents pur deux cauſes. Un eſt, pur ceo que p tiel Feoffment ma Reuerſiõ ẽ diſcontinue, l'quel eſt a tort fait, ẽ nẽ y a droit fait. Un auter cauſe eſt, ſi le Tenant en taile moruſt, et ſon iſſue ſuiſt Briefe de Formedon enuers le feoffé, le bẽ dirra, & auxy le count &c. que l'feoffé a tort luy deforce, &c. Ergo ſil a tort luy deforce, &c. il nad pas droiturel eſtate.

ſelf, and after the Tenant in taile infeoffeth another in Fee, the Feoffee hath no rightful eſtate in the Tenements for two cauſes: One is, for that by ſuch Feoffement my reverſion is diſcontinued the which is a wrong and not a rightful Act. Another cauſe is, if the Tenant in Taile dieth, and his Iſſue bring a Writ of *Formedon* againſt the Feoffee, the Writ and alſo the Declaration ſhall ſay, &c. That the Feoffee by wrong him deforces, &c. *ergo* if he deforceth him by wrong, he hath no right eſtate.

Sect. 615.

¶ Item, ſi terre ſoit leſſe a vn home pur terme de ſa vie, le remainder a vn auter en le Taile, ſi celuy en le remainder voile graunter ſon remainder a vn auter en fee per ſon fait, et le Tenant a terme de vie atturna, ceo neſt pas diſcontinuance de le remainder.

ALſo if Land be let to a man for term of his life, the remainder to another in Taile, if he in the remainder will grant his remainder to another in Fee by his Deed, and the Tenaunt for life attorne, this is no diſcontinuance of the Remainder.

Sect.

Sect. 616.

ITem, ſi home ad Rent ſervice ou Rent charge en Taile, et il granta le dit Rent a vn auter en fée, et le tenaunt attorna, ceo neſt pas diſcontinuance, &c.

ALſo if a man hath a Rent ſervice or Rent charge in Taile, and he grant the ſaid Rent to another in Fee, and the Tenaunt attorne, this is no Diſcontinuance, &c.

Sect. 617.

ITem, ſi home ſoit Tenant en Taile de vn advowſon en groſſe, ou de vn Common en groſſe, ſil per ſon fait voile graunt ladvowſon, ou le Common a vn auter en fée, ceo neſt pas diſcontinuance. Car en tiels caſes les Grantées nont eſtate forſque pur terme de vie de le Tenant en taile que fiſt le Grant, &c.

ALſo if a man be Tenaunt in Taile of an Advowſon in Groſſe, or of a Common in Groſs, if he by his Deed will graunt the Advowſon or Common to another in Fee, this is no Diſcontinuance; for in ſuch caſes the Grauntees have no eſtate but for term of the life of Tenant in Taile that made the Grant, &c.

Bract. l. 2. f. 7. & f 366. 378. Brit. f. 187. Mir. ca. 2. Sect. 17. Flet. lib. 3. ca. 15.

BY the caſes in theſe three Sections it appeareth, That if a Remainder or a Rent ſervice, or a Rent charge, or an Advowſon, or a Common, or any other Inheritance that lieth in Grant, be granted by Tenant in Taile, it is no Diſcontinuance, as forſ. unto hath been ſaid.

(p) 5. E. 3. 58. 21. E. 3. 37, 38. 43. E. 3. 1. b. 11. H. 6. 4. 5. H. 7. 37. 18. H. 8. 16. El. Dy. 323 b.

(q) Note, here is an Advowſon named by Littleton, as a thing that lieth in Grant, and paſſeth not by Livery of Seiſin.

Sect. 618.

ET nota, que de tiels choſes que paſſont per voy de graunt per Fait fait en pays, et ſans liuery, la tiel graunt ne fait pas diſcontinuance, come en les caſes auantdits, et en auter caſes ſemblables, &c. et coment que tiels choſes ſont graunts en Fée per fine leuie en le Court

AND note that of ſuch things as paſs by way of grant, by Deed made in the Country, and without Livery, there ſuch Grant maketh no diſcontinuance, as in the caſes aforeſaid, and in other like caſes, &c. And albeit ſuch things be graunted in Fee, by Fine levied in the Kings Court, &c.

HEre is the general reaſon yelded of the precedent caſes and the like, for that it is a Maxim in Law, That a Grant (d) by Deed of ſuch things as do lie in Grant, and not in Livery of Seiſin, do work no diſcontinuance. But the particular reaſon is, for that of ſuch things the Grant of Tenant in Taile worketh no wrong, either to the Iſſue in Taile, or to him in reverſion or remainder, for nothing doth paſſe but only during the life of Tenant in Taile, which is lawful, and every diſcontinuance worketh a wrong, as hath been ſaid.

(d) 6. E. 3. 56 32. E. 3. Diſcont. 2. 33. Aſſ. 8. 4. H. 7. 17 21. H. 7. 42. 15. H. 7. 19. 21. H. 6. 52, 53. 5. E. 4. 3. 21. E. 4. 5. 22. R. 2. Diſcont. 50. 38. H. 8. Diſcont. 35. Brooke. 19. E. 3. Brc. 468. Pl. Com. 435. 18. Aſſ. p. 2.

(q) If

(q) 33.E.3. Formd.47. 33.H.7.10.36.Aſſ.8. 4.H.7.17.

(q) If Tenant in Taile of a Rent ſervice, &c. or of a Reverſion, or Remainder in Taile, &c. grant the ſame in Fee with warranty, and leaveth Aſſets in Fee ſimple, and le Roy, &c. uncore ceo ne fait diſcontinuance, &c. yet this maketh not a Diſcontinuance, &c.

dieth, this is neither barre nor diſcontinuance to the Iſſue in Taile, but he may diſtrein for the Rent or ſervice, or enter into the land after the deceaſe of Tenant for life. But if the Iſſue bringeth a Formedon in the Diſcender, and admit himſelf out of poſſeſſion, then he ſhall be barred by the warranty and Aſſets.

(r) 3.H.7.12.

9.E.4.22.

(r) Tenant in Taile of a Rent diſſeiſeth the Tenant of the Land, and maketh a Feoffment in Fee with warranty and dieth, this is no diſcontinuance of the Rent, but the Iſſue may ſtreyne for the ſame, and albeit the Warranty extend to the Rent, yet by the rule of Littleton it lieth not in Diſcontinuance: and where the thing doth lie in Livery, as Lands and Tenements, yet if to the conveyance of the Freehold or Inheritance, no Livery of Seiſin is requiſite, it worketh no diſcontinuance.

(f) 38.H.8.Paten.Br.101 Pl. Com.233. Li.1.f.26. Alton Woods caſe.

48.E.3.23.

(f) If Tenant in Taile exchange Lands, &c. or if the King being Tenant in Taile, grant by his Letters Patents the Lands in Fee, there is no Diſcontinuance wrought.

¶ *Per Fine.* Of a thing that lieth in Grant, though it be granted by Fine, yet it worketh no Diſcontinuance, and this is regularly true.

(t) 15.E.4.tit.Diſcont.30

6.H.56,57.

(t) If Tenant in taile make a Leaſe for years of Lands, and after levy a Fine, this is a Diſcontinuance, for a Fine is a Feoffment of Record, and the Freehold paſſeth. But if Tenant in Taile maketh a Leaſe for his own life, and after levy a Fine, this is no Diſcontinuance, becauſe the Reverſion expectant upon a ſtate of Freehold which lieth only in Grant paſſeth thereby.

Sect. 619.

¶* NOta, ſi ieodone terre avn auter en taile, et il leſſa meſme la terre a vn auter p̄ time dans, et puis le Leſſor graunta le reverſion a vn auter en fee, et le tenant a terme dans atturna al Grantee, et le terme eſt expire durant la vie le tenant en taile, per que le Grantee enter, et puis le tenant en taile ad iſſue et duie, en ceo caſe ceo neſt diſcontinuance, nient obſtant que le Grant ſoit execute en la vie le Tenaunt en Taile, pur ceo que al temps de Leaſe fait a terme dans, nul nouel Fee ſimple fuit reſerue en le Leſſor, eins le Reuerſion demurt a luy en Tayl' ſicome il fuit deuant le Leaſe fait.*

NOte, if I give Land to another in Taile, and he letteth the ſame land to another for term of years, and after the Leſſor graunteth the reverſion to another in fee, and the Tenant for years attorn to the Grantee, and the term expireth during the life of the tenant in Tayle, by which the Grauntee enter, and after the Tenant in Taile hath Iſſue and die: in this caſe this is no Diſcontinuance, notwithſtanding the Grant be executed in the life of the Tenant in Taile, for that at the time of the Leaſe made for years, no new Fee ſimple was reſerved in the Leſſor, but the Reverſion remained to him in Taile, as it was before the leaſe made.

¶* This is added to Littleton, and not in the Original, and therefore I purpoſely omit it: yet is the caſe good in Law, becauſe neither the Leaſe for years, nor the grant of the Reverſion diveſteth any Eſtate.

Sect.

Sect. 620.

MEz ſi le tenant ẽ taile fait leas a terme de vie le leſſee, &c. en ceſt caſe le tenãt en le tayle ad fait vn novel reuerſion de fee ſimple en luy, pur ceo que quant il fit leas p̃ terme de vie, &c. il diſcontinua le taile, &c. p force de meſm̃ le leas, & auxy il diſcontinua ma reuerſion, &c. & il couient que la reuerſion de fee ſimple ſoit en aſcun perſon ẽ tiel cas, et il ne poit eſtre en moy que ſue donor, entant que mon reuerſion eſt diſcontinue, Ergo il couient que la reverſion de fee ſoit en le tenant en le taile, que diſcontinua ma reuerſion per tiel leas, &c. Et ſi en ceſt caſe le tenant en le taile grauntz per ſon fait ceſt reuerſion en fee a vn auter, et le tenant a terme de vie attorna, &c. et puis le tenant a terme de vie mourt, vivant le tenant en le taile, et le grantee de le reuerſion entra, &c. en la vie le tenant en le taile, donqz ceo eſt vn diſcontinuance en fee, & ſi ayes le tenant en le taile mourſt, ſon iſſue ne poit enter, mes eſt mis a ſon bꝛe de Formedon.

BUt if the Tenant in tail make a leaſe for terme of the life of the Leſſee, &c. In this caſe the Tenant in tayle hath made a new reverſion of the fee ſimple in him, becauſe when he made the Leaſe for life, &c. he diſcontinued the tayle, &c. by force of the ſame Leaſe, and alſo he diſcontinued my reverſion, &c. And it behoveth that the reverſion of the fee ſimple be in ſome perſon in ſuch caſe. And it cannot be in me which am the donor, inaſmuch as my reverſion is diſcontinued, *Ergo* the reverſion of the fee ought to be in the tenant in tayle, who diſcontinued my Reverſion by Leaſe, &c. And if in this caſe the Tenant in tayle grant by his Deed this Reverſion in fee to another, and the Tenant for life attorne, &c. and after the Tenant for life dieth, living the Tenant in taile, and the grantee of the reverſion enter, &c. in the life of the Tenant in taile, then this is a diſcontinuance in fee, and if after the Tenant in tayle dieth, his Iſſue may not enter, but is put to his Writ of *Formedon.*

¶ *Pur terme de vie del leſſee &c.* Here is implied, or for terme of another mans life.

¶ *Novel reverſion de fee ſimple.* which muſt be underſtood of a fee ſimple determinable upon the life of the Leſſee, which our Author here calleth a fee ſimple, for if the Leſſee dieth, the Donee is Tenant in taile again as he was before, and that is the reaſon that if in that caſe he granteth over the reverſion and dieth, and after the death of Tenant in taile the Leſſee dieth, the entry of the iſſue is lawful, becauſe by the death of the Leſſee the Diſcontinuance is determined, and conſequently the grant made of the reverſion gained upon that diſcontinuance is void alſo. 15.E.4.Tit.Diſcont.30.

If Tenant in taile maketh a leaſe for three lives according to the Statute of 32. H.8. that is no diſcontinuance of the eſtate taile or of the reverſion, becauſe it is authoriſed, by Act of Parliament wherevnto every man in iudgement of Law is partie. 32.H.8.cap.28.

And yet in ſome caſes the freehold may be diſcontinued and not the reverſion. (u) As if the husband and wife make a leaſe for life by Deed of the wives Land reſerving a rent, the husband dieth, this was a Diſcontinuance at the Common Law for life, and yet the reverſion was not diſcontinued, but remained in the wife. Otherwiſe it is (u) 38. E.3.32.18.Aſſ.2 18.E.3.54 22.H.6.24.

if the husband had made the Leaſe alone.

21.H.6.52.15.E.4 tit. Diſcont. 30.

¶ *Et puis le tenant a terme de vie moruſt, &c.* The like Law it is if the Tenant for life ſurrender to the Grantee, or if the Grantee recover in an Action of Waſte, or enter for the forfeiture.

32.E.3.Diſcont.2. 43.E.3. Entr. Cong. 37. 3.H.4 9.22. R.2. diſcont. 50.34. Aſſ.6.Pl.4.38. Aſſ.6.p.6.43. Aſſ.6 48. 18.E.3.43.21.H.6.52.15 E.4.tit. Diſcontinuance 30.Brooke tit. diſcont. 3. & 144.H.7. 17. 21.H.7.11.

¶ *Avoit ſeiſin & execution.* And here it is to be obſerved, that when the reverſion in this caſe is executed in the life of Tenant in tail, it is equivalent in judgement of Law to a feoffment in fee, for the eſtate for life paſſed by Livery.

don. Et la cauſe eſt, pur ceo que cestuy q̄ auoit l'grant de tiel reverſion en fee Simple, auoit le ſeiſin & execution de meſmes les terres ou tenements, dauer a luy et a ſes heires en ſon demeſne come de fee, en la vie l'tenant en taile, et ceo eſt per force de grant de meſme le tenant en taile.

And the cauſe is, for that he which hath the grant of ſuch reverſion in fee ſimple hath the ſeiſin and execution of the ſame lands or tenements; to have to him and to his heires in his Demeſne as of fee in the life of the tenant in taile; and this is by force of the grant of the ſaid Tenant in taile.

(w) If Tenant in taile make a Leaſe for life, the remainder in fee, this is an abſolute Diſcontinuance albeit the remainder be not executed in the life of Tenant in taile, becauſe all is one eſtate and paſſeth by one livery. And ſo note a diverſity between a grant of a reverſion, and a limitation of a remainder. B. Tenant in taile maketh a gift in taile to A. and other B. releaſeth to A. and his heires, and after A. dieth without iſſue, the iſſue of the firſt Donee may enter upon the collateral heir, becauſe A. had not ſeiſin and execution of the reverſion of the land in his Demeſne as of fee, as Littleton here ſpeaketh. But if Tenant in taile make a leaſe for the life of the Leſſee, and after releaſeth to him and his heires, this is an abſolute Diſcontinuance, becauſe the fee ſimple is executed in the life of Tenant in taile.

(w) 21. H.6.52,53.

(y) 34.E.1.Quare Impedit 179. 22.E.3.6. 17.E. 3.3.33.E.3.Quare Imp. 196.23.Aſſ.8.50.E.3. 26.

(y) If Tenant in taile of a Manno? whereunto an Aduowſon is appendant maketh a feoffment in fee by deed (as it ought to be) of one Acre with the Aduowſon, and the Church becometh void, and the feoffee preſent, Tenant in taile dieth, the Church becometh void, the iſſue ſhall not preſent until he hath recontinued the Acre. But if the feoffee had not executed the ſame by preſentment, then the iſſue in taile ſhould have preſented. And ſo ſay I by the Common Law of the husband ſeiſed in the right of his wife, mutatis mutandis.

36.Aſſ.8. 42.E.3.22. 22.R.2.Diſcent.50.

If a fine be levied to a Tenant in taile, and he granteth and rendreth the Land to him and his heires, and die before execution, this is no Diſcontinuance. Otherwiſe it is, if it had been executed in the life of Tenant in taile.

21.H.6.52,53. Brooke tit.Diſcontin 3. 21.H.7.11.Lib.1.fol.85. Lib.10.fol.96,97.

If Tenant in taile make a Leaſe for life of the Leſſe, and after grant the Reverſion with warranty, and dieth before execution, this is no Diſcontinuance, becauſe the Diſcontinuance was (as hath been ſaid) but for life, and the warranty cannot enlarge the ſame.

(*) 15.E.4.Diſcont.30. Vide Sect. 642.

¶ *Et ceo eſt per force del grant de meſme le tenant en tayle.* Hereupon Littleton himſelf is of the ſame opinion, (*) as it appeareth he was in our Books, that if Tenant in taile make a Leaſe for life, and grant the Reverſion in fee, and the Leſſee attorne, and that Grantee granteth it over, and the Leſſee attorne, and then the Leſſee for life dieth, ſo as the Reverſion is executed in the life of Tenant in taile, yet this is no Diſcontinuance, but that after the death of Tenant in taile the iſſue may enter, becauſe (as Littleton here ſaith) he is not in of the grant of the Tenant in taile, but of his Grantee.

If at this day Tenant in taile make a Leaſe for life, and after by deed indented and inrolled according to the Statute he bargaineth and ſelleth the Reverſion to another in fee, and the Leſſee dieth, ſo as the Reverſion is executed in the life of Tenant in taile, albeit the bargainee is not in the per by the Tenant in taile, yet inaſmuch as he claimeth the Reverſion immediately from him, which is executed in his life time, this is a Diſcontinuance. And ſo it is, and for the ſame cauſe if Tenant in taile had granted the Reverſion to the uſe of another and his heirs. If Tenant in taile maketh a Leaſe for life, and after diſſeiſeth the Leſſee for life and maketh a feoffment in fee, the Leſſee dieth, and then Tenant in taile dieth, albeit the fee be executed, yet for that the fee was not executed by lawful meanes, (as in all the Caſes of Littleton it appeareth it ought to be) it is no Diſcontinuance.

Sect.

Sect. 621.

¶ En meſme le manner ſerra, ſi en le caſe auantdit, le tenant a terme de vie apres lattournement al grantée vſt alien en fée, & le grantée vſt enter pur forfeiture de ſon eſtate, et puis le tenant en taile vſt deuie, ceſt vn diſcontinuance, Cauſa qua ſupra. ¶.

IN the ſame manner ſhall it be, if in the caſe aforeſaid the Tenant for terme of life after the Attornement to the Grantee had aliened in fee, and the Grantee had entred by forfeiture of his eſtate, and after the Tenant in taile had died this is a Diſcontinuance, *Cauſa qua ſupra.* ¶.

¶ This is added in this place, but in the Original it cometh in after in this Chapter. 21.H.6.52,53.15.E.4. Diſcont. 30.

Sect. 622.

¶ Mes en ceſt cas, ſi tenãt en taile que grant a le reuerſion, &c. mozuſt, viuant le tenant a terme de vie et puis le tenant a terme de vie mozuſt, & puis celuy a que le reuerſion fuit graunt enter, &c. donque ceo neſt pas diſcontinuance, mes que liſſu del tenant en taile poit bien enter ſur le grauntée del Reuerſion, pur ceo que le Reuerſion que le grauntée auoit, &c. ne fuit executé, &c. en le vie le tenant en taile, &c. Et iſſint il eſt graund diuerſity quant tenant en taile fait vn leas pur terme dans, & lou il fait leas pur terme de vie, car en lun cas il ad reuerſion en taile, & en lauter cas il ad un reuerſion en fée.

BUt in this caſe, if Tenant in tail that grants the reverſion, &c. dieth living the tenant for life, and after the Tenant for life dieth, and after he to whom the reverſion was granted enter, &c. then this is no diſcontinuance, but that the iſſue of the tenant in taile may well enter upon the Grantee of the reverſion, becauſe the Reverſion which the Grantee had, &c. was not executed, &c. in the life of the tenant in taile, &c. And ſo there is a great diverſity when Tenant in taile maketh a Leaſe for years, and where he maketh a Leaſe for life, for in the one caſe he hath a reverſion in taile, and in the other caſe he hath a reverſion in fee.

¶ Of this ſufficient hath been ſaid before, and is of it ſelf manifeſt and needeth no explication.

The Law was at the Common Law of a husband ſeiſed of Land in right of his wife, Mutatis mutandis. 18.Aſſ.6.21.H.6.53.

Sect. 623.

CAr ſi terre ſoit done a vn hõe et a ſes heires males de ſon corps engendres, le quel ad iſſue deux fits, et leigne fits ad iſſue file et deuy, et le tenã en taile fait vn leas pur terme des ans, et deuy, ore le reuerſion diſcendiſt a le fits puiſne, pur ceo que le reuerſion fuit forſque en le taile, et le fits puiſne eſt heire male, &c. Mes ſi le tenant vſt fait vn leas pur terme de vie, &c. et puis mourſt, ore le reuerſion diſcendiſt a le file del eigne fits, pur ceo que le reuerſion eſt en fée ſimple, et la file eſt heire general, &c.

FOr if land be given to a man and to his heires males of his body engendred, who hath iſſue two ſons, and the eldeſt ſon hath iſſue a daughter and dieth, and the tenant in tail maketh a leaſe for years and die, now the reverſion deſcendeth to the younger ſon, for that the reverſion was but in the taile, and the youngeſt ſon is heir male, &c. But if the tenant had made a leaſe for life, &c. and after died, now the reverſion deſcend to the daughter of the elder brother, for that the reverſion is in the fee ſimple, and the daughter is heir general, &c.

This is evident alſo and needeth no explanation.

Sect. 624.

ITem, ſi home ſoit ſeiſie en taile de terres deuiſables per teſtament, &c. et il ceo deuiſa a vn auter en fée, et mourſt, et lauter enter, &c. ceo neſt pas diſcontinuance, pur ceo que nul diſcontinuance fuit fait en la vie del tenant en le taile, &c.

ALſo if a man be ſeiſed in taile of lands deviſable by Teſtament, &c. and he deviſeth this to another in fee, and dieth and the other enter, &c. this is no diſcontinuance, for that no diſcontinuance was made in the life of the Tenant in taile, &c.

9.I.4.22.20.H.6.14. Vid.18.E.3.8.

THis is manifeſt and needeth no explanation: Only this is to be obſerved, that no Diſcontinuance can be made by Tenant in taile, but ſuch as is made, and taketh effect in his life time, which is here implied in the (&c.)

Sect. 625.

(a) 9 E.4.24 b.

AMong this opinion is Littleton (a) in our bookes, and ſaith that ſo it was adiudged.

Enfeoffe le donor, &c. This muſt be underſtood where the reverſion of the Donor is immediately ex-

Lib. 1. fol. 140. in Chudleyes caſe.

ITem, ſi terr ſoit done en taile, ſavant le reuerſion al donor, et puis le tenãt en taile per ſon fait enfeoffa l'donor, a

ALſo if land be given in tail, ſaving the reverſion to the Donor, and after the Tenant in taile by his deed enfeoffe the Do-

a auer et tener a luy et a ſes heirs a touts iours, et liuer a luy ſeiſin accordant, &c. ceo neſt pas diſcontinuance, pur ceo que nul poit diſcontinuer leſtate en le taile, ſinon q̄ il diſcontinue le reuerſion celuy que ad le reuerſion, &c. ou le remainder, ſi aſcun ad le remainder, &c. & entant que per tiel feoffmēt fait a le donor (le reuerſion adonqz eſteant en luy) ſon reuerſion ne fuit diſcontinue ne alterate, &c. ceſt feoffmēt neſt pas diſcontinuance, &c.

nor, To have and to hold to him and to his heirs for ever, and deliver to him ſeiſin accordingly, &c. this is no diſcontinuance, becauſe none can diſcontinue the eſtate taile, unleſs he diſcontinueth the reverſion of him who hath the reverſion, &c. or remainder, if any hath the remainder, &c. and inaſmuch as by ſuch feoffment made to the Donor (the reverſion then being in him) his reverſion was not diſcontinued nor altred, &c. this feoffment is no diſcontinuance, &c.

pectant upon the eſtate of the Donée, (b) for if a man make a Gift in taile the remainder in taile, reſerving the reverſion to himſelf: In this caſe if the Donée enfeoffe the Donor, this is a diſcontinuance, becauſe there is a meane eſtate, and ſo doth Littleton here put his caſe of a reverſion immediately expectant upon the gift in taile. Alſo it is to be intended of a feoffment made to the Donor ſolely or only, for if the Donée enfeoffe the Donor and a ſtranger, this is a diſcontinuance of the whole land. (b) 41. Aſſ. 2. 41. E. 3. 28. H. 8. Dier. 12.

But if Tenant for life make a Leaſe for his own life to the Leſſor, the remainder to the Leſſor and an ſtranger in fee: In this caſe forasmuch as the limitation of the fée ſhould work the wrong, it enureth to the Leſſor as a ſurrender for the one moity, and a forfeiture as to the remainder of the ſtranger, for he cannot give to the Leſſor that which he had before, as our Author here ſaith, and as to the remainder to the ſtranger, it is a forfeiture for his moity, and when the Leſſor entreth he ſhall take the benefit of it. But if two Joyntenants be, and one of them enfeoffe his Companion and a ſtranger, and make Livery to the ſtranger, this ſhall veſt only in the ſtranger, becauſe the Livery cannot inure to his Companion.

¶ *Nul poet diſcontinuer leſtate en taile, ſinon que il diſcontinue le reuerſion, &c. ou le remainder, &c.* And therefore for this cauſe if the reverſion or remainder be in the King, the Tenant in taile cannot diſcontinue the eſtate taile. (c) But tenant in taile, the reverſion in the King, might have barred the eſtate taile by a Common recovery until the Statute of 33. H. 8. ca. 20. which reſtraineth ſuch a Tenant in taile, but that common recovery neither barred nor diſcontinued the Kings reverſion. 40. Aſſ. 36. 21. Aſſ. 36. 18. E. 3. 45. F. N. B. 142. a. Pl. Com. 555. (c) 33. H. 8. tit. Taile. Br. 41. Pl. Com. ubi ſupra. ¶

Note the reverſion may be revelled, and yet the Diſcontinuance remain. (d) As if a Feme Covert be Tenant for life, and the husband make a Feoffment in fee, and the Leſſor enter for the forfeiture, here is the reverſion revelled, and yet the Diſcontinuance remaines at the Common Law. (d) 27. Aſſ. p. 60. 29. Aſſ. 43. 11. Aſſ. 11, 16. Aſſ. 11. 18. E. 3. 45.

Sect. 626.

¶ Eſ meſme le maner eſt, lou terres ſont dones a vn hõe en taile, le remainder a vn auter en fee, et le tenãt en taile enfeoffa celuy, que eſt en le remainder, a auer et tener a luy, et a ſes heirs, ceo neſt pas diſcontinuance, Cauſa qua ſupra.

IN the ſame manner it is, where lands are given to a man in taile, the remainder to another in fee, and the tenant in taile enfeoffe him that is in the remainder, To have and to hold to him & to his heires, this is no diſcontinuance, *Cauſa qua ſupra.*

¶ *Le remainder a vn auter.* Here it appeareth that (as hath been ſaid in caſe of a reverſion) the remainder muſt be immediately expectant upon the eſtate taile.

Sect.

Sect. 627.

¶ Item, ſi vn Abbe ad vn Reuerſion ou Rent ſeruice, ou Rent charge, et voile graunter cel reuerſion, ou Rent ſeruice, ou Rent charge a un auter en fée, et le tenant atturna, &c. ceo nẽ pas diſcontinuance.

ALſo if an Abbot hath a Reverſion, or a Rent ſervice, or a Rent charge, and he will grant this Reverſion, or Rent ſervice, or Rent charge to another in Fee, and the Tenant attorne, &c. this is no diſcontinuance.

Of Inheritances that lie in Grant, ſufficient hath bẽn ſaid before.

Sect. 628.

¶ En meſme le manner lou Abbe eſt ſeiſie dun Aduowſon, ou de tielx choſes que paſſont per voy ð grant ſans liuerie de ſeiſin, &c.

IN the ſame manner where an Abbot is ſeiſed of an Advowſon, or of ſuch things which paſs by way of Grant without Livery of ſeiſin, &c.

¶ Here it appeareth, (as hath bẽn ſaid) That an Aduowſon doth not lie in Livery, but in Grant.

Sect. 629.

¶ Item, ſi Tenant en Taile leſſa ſa terre a vn auẽ pur terme de vie, et puis il graunta en fée le Reuerſion a vn auter, et l' tenant atturna, & puis le tenant a terme de vie aliena en fée, et le Grantée de reuerſion entra, &c. en le vie le Tenant en le Taile, et puis le Tenant en le Taile mozuſt, ſon Iſſue ne poit enter, mes eſt mis a ſon Briefe ð Formedon, pur ceo que le Reuerſion en fée ſimple que le Graunto; auoit per le grant del tenant en le Taile fuit execute en le vie de meſme le tenaunt en le Taile, et pur ceo eſt vn diſcontinuance en fée, &c.

ALſo if Tenant in Tayle letteth his Land to another for life, and after he granteth in Fee the Reverſion to another, and the Tenant attorne, and after the Tenant for life alien in Fee, and the Grauntee of the Reverſion enter, &c. in the life of the Tenant in Taile, and after the Tenant in Taile dieth, his Iſſue ſhall not enter, but is put to his Writ of *Formedon*, becauſe the Reverſion in Fee ſimple which the Grauntor had by the Graunt of the Tenant in Taile, was executed in the life of the ſame Tenant in Taile, and therefore it is a diſcontinuance in Fee, &c.

Of this ſufficient hath bẽn ſaid before.

Sect.

Sect. 630.

¶ Et nota que aſcuns font diſcontinuances p̄ terme de vie. Sicome Tenaunt en le taile fait vn Leaſe pur terme de vie, ſauant le reuſion a luy, auxy longement que le reuerſion eſt al tenant en taile, ou a ſes heires, ceo neſt diſcontinuance, forſque durant la vie le tenant a terme d̄ vie, &c. Et ſi tiel tenant en taile dona les tenements a vn auter en taile, ſauant le reuerſion, donques ceo eſt diſcontinuance durant le ſecond taile, &c.

And note that ſome make diſcontinuances for term of life. As if Tenant in Tayle make a Leaſe for life, ſaving the reverſion to him as long as the Reverſion is to the Tenaunt in Tayle or to his Heires: This is no diſcontinuance but during the life of Tenant for life, &c. And if ſuch Tenant in Taile giveth the lands to another in Taile, ſaving the Reverſion, then this is a Diſcontinuance during the ſecond Tayle, &c.

¶ This is manifeſt, and hath been handled before, and needeth no explanation, only this is to be obſerved, where Littleton putteth hereafter caſes of Diſcontinuances by Feoffement, &c. he hath a double entendment: Firſt, by Feoffement or by any other Conveyance which may make a Diſcontinuance. Secondly, (&c.) implieth a Diſcontinuance by a gift in Taile, or a Leaſe for life, &c.

Sect. 631.

¶ Mes lou l' tenant en tayle fait vn leaſe pur terme dans, ou pur terme de vie, le remainder a vn auter en fée, et deliver̄ liuerie de ſeiſin accordant, ceo eſt diſcontinuance en fée, pur ceo que le fée ſimple paſſa per force de liuerie de ſeiſin, &c.

But where the Tenant in Tayle maketh a Leaſe for years or for life, the remainder to another in Fee, and delivereth Livery of Seiſin accordingly, this is a Diſcontinuance in Fee, for that the fee ſimple paſſeth by force of the Livery of Seiſin, &c.

This is evident alſo, and hereof ſufficient hath been ſpoken before.

Sect. 632.

¶ Et eſt aſcauoir̄, q̄ aſcuns tiels diſcontinuances ſont fait ſur condition, &c. et pur ceo que les conditions ſont enfrents, &c. ou per

And it is to be underſtood, That ſome ſuch Diſcontinuances are made upon Condition, &c. and for that the conditions be broken, &c. or for

¶ *Diſcontinuances fait ſur Condition, &c.* Here is to be underſtood a Diverſitie betweene a Condition in Deed, whereof Littleton here ſpeaketh, and a Condition in Law, whereof ſomewhat hath been ſaid before in this Chapter, viz.

viz. where the Feme is tenant for life, and the husband maketh a Feoffment in Fee, and the Lessor entreth for the Condition in Law.

¶ *Conditions sont enfrets, &c.* Here is implied, If any cause given either by disability of the feoffees, or by any condition performed on the part of the feoffor, or otherwise, whereby the state is in any sort avoided.

¶ *Come si le Baron sont seisie de certain terre en droit sa feme, &c.* Here it appeareth, That for the Condition broken, the heire of the husband may enter, for albeit no right descend from the husband to his heir, yet the title of entry by force of the Condition which the husband created upon the Feoffement, and reserved to him and his heirs, doth descend to his heire, and Littleton saith truly, That so it hath been adiudged.

4.H.6.2.9.H.7.24.b. Lib.8. fol. 43,44. Whittinghams case.

¶ *Sur le heire.* Nota, When the heire in this case hath entred for the Condition broken, and hath avoided the Feoffement, the estate of the heire vanisheth away, and presently the Estate vesteth in the Feme or her heires, without any entry or claim by her or them; for the heir entreth in respect of the Condition, upon the real Contract, and not of any right, as hath been said, and if the husband himself had re-entred, the state had vested in his wife: And therefore where Littleton and our Books say, That the wife shall enter upon the heire, the meaning is, that after the re-entry of the heire she may enter.

Whittinghams case ubi supra.

Sect. 633.

Whittinghams case ubi supra.

¶ The reason here rendred by Littleton is, for that the husband cannot enter in his own right, but in the right of his wife; and the heire of the husband cannot enter, for no right or title descends unto him, and the wife in this case shall take benefit of the nonage of her husband, & enter into the land.

If an Infant be Tenant for another mans life, and make a Feoffement in fee, and dieth, the Infant himself shall not enter, because he hath no right at all.

ITem, si Feme Inheritrix q̄ ad vn Baron, quel Baron est diens age, et il esteant diens age fait vn Feoffment de les Tenements son fēe en fē, et morust, il ad este question, si la fēe poit enter, ou non, &c. Et il semble a aſcuns, que lentry la Feme

ALso if a Woman Inheritrix hath a husband who is within age, and he being within age maketh a Feoffement of the Tenements of his wife in Fee, and dieth, it hath been a question, if the Wife may enter or not, &c. And it seemeth to some, that the

auters causes, solonque le course de la ley, tiels estates sont defeates, donques sont les discontinuances defeats, et ne tollent aſcun home per force de eux, de son entrie, &c. Come si le Baron soit seisie de certē tre en droit sa Feme, et fait Feoffement en fē sur condition, et deuie, si le heire apres enter sur le feoffē pur le Condition entreint, lentrie la Feme est congeable sur le heire, pur ceo que per lentrie del heire le discontinuance est defeat, come est adiudge.

other causes; according to the course of Law such estates are defeated, then are the Discontinuances defeated, and shall not by force of them take any man from his entry, &c. As if the husband be seised of certain land in right of his wife, and maketh a Feoffement in Fee upon Condition, and dyeth, if the Heire after enter upon the Feoffee for the condition broken, the entry of the wife was cōgeable upon the heire, for that by the entry of the heire the discontinuance is defeaed, as is adjudged.

Feme apres la mort la baron, eſt congeable en teſt cas. Car quant ſa baron feaſoit tiel feoffment, &c. il puiſſoit biẽ enter, nient contrieãt tiel feoffment, &c. durãt la couerture, et il ne puiſſoit enter en ſon droit demeſne, mes en le droit la feme, Ergo tiel droit que il auoit dentrer en droit ſa feme, &c. ceſt droit dentrer demurt al feme apres ſon deceaſe.

entrie of the wife after the death of her Huſband is congeable in this caſe. For when her Huſband made ſuch feoffment, &c. he might well enter notwithſtanding ſuch feoffment, &c. during the coverture, and he could not enter in his own right but in the right of his wife, *Ergo* ſuch right as he had to enter in the right of his wife, &c. this right of entrie remaineth to the wife after his deceaſe.

If the husband within age take to wife feme tenant in taile generall, and the husband make a gift in taile and dieth within age, in this caſe the wife may enter, as Littleton here holdeth, or the heirs of the husband in reſpect of the new reverſion deſcended unto him may enter. But if the heire enter, preſently thereupon his eſtate vaniſheth. If tenant in taile being within the age of one and twenty yeres make a feoffment in fee, and after is attainted of felony and dieth, the entry of the iſſue is not lawful, for his entry is not lawful in reſpect of his eſtate only, but of his

kind alſo which is corrupted, and therefore in that caſe he is driven to his Formedon.

If husband and wife be both within age, and they by Deed inverted ſoyne in a Feoffment reſerving a rent, the husband dieth, the wife may enter or habe a Dum fuit infra ætatem. But if ſhe were of full age, ſhe ſhall not have a Dum fuit infra ætatem, for the nonage of her husband, albeit they be but one perſon in Law. 14.E.3.Bre.281.14.E.3. Dum fuit infra ætatem 6. F.N.B. 192.

Sect. 634.

ET il y ad ẽe dit, que ſi deux ioynteenants eſtats deins age, font un feoffment en fee, et lun des enfants deuy, et lauter ſurueſquiſt, entant que les amideux enfants puiſſont ent ioyntmẽt en lour vies, cel droit accruiſt tout a luy que ſurueſquiſt, et pur ceo celuy que ſurueſquiſt poit enter en lentiertie, &c. Et auxy heire le baron que fiſt le feoffment deins age ne poit enter, &c. pur ceo que nul droit deſcendiſt a tiel heire en le cas auantdit, pur ceo que le baron nauoit vnques riens forſque en droit de ſa feme, &c.

AND it hath been ſaid, that if two Joyntenants being within age make a feoffment in fee and one of the Infants die, and the other ſurviveth in as much as both the Infants might enter joyntly in their lives, this right accrueth all to him which ſurviveth, and therefore he that ſurviveth may enter into the whole, &c. And alſo the heire of the husband which made the feoffment within age cannot enter, &c. becauſe no right deſcendeth to ſuch heire in the caſe aforeſaid, for that the husband had never any thing but in right of his wife, &c.

POet enter en lentiertie, &c. And the reaſon hereof is implied in this (&c.) for that they may ſoyne in a Writ of right, and therefore the right ſhall ſurvive. But they cannot ſoyne in a Dum fuit infra ætatem, becauſe the nonage of the one is not the 21.E.3.50.18.E.2.Bre. 831.6.E.3.49.H.6.6. 19.H.6.6.39.H.6.42. 34.H.6.34.F.N.B.192.

nonage of the other. In this caſe if one Joyntenant had made a Feoffment in fee and died, the right ſhould not have ſurvived, for the Joynture was ſevered for a time. If two Joyntenants be, and the one is of full age, and the other within age, and both they make a Feoffment in fee, and he of full age dieth, the Infant ſhall enter, or have a Dum fuit infra ætatem, but for the moity.

See of this in the Chapter of Joyntenants.

Sect. 635.

ET auxy quant vn enfant fait vn feoffment eſteant deins age ceo ne luy greeuera ne iedra, mes que il poit enter bien, &c. car ceo ſerroit encounter reaſon, que tiel feoffment fait per celuy que ne fuit able de faire tiel feoffment, greeuera ou iedera auter, de toller eux de lour entre, &c. Et pur ceux cauſes il ſemble a aſcuns, que apres la mort de tiel baron iſſint eſteant deins age al temps de le feoffment, &c. que ſa feme bien poit enter, &c.

AND alſo when an infant make a feoffment being within age, this ſhall neither grieve nor hurt him, but that he may well enter, &c. for it ſhould be againſt reaſon that ſuch feoffment made by him that was not able to make ſuch a feoffment, ſhall grieve or hurt another to take them from their entry, &c. And for theſe reaſons it ſeemeth to ſome, that after the death of ſuch husband ſo being within age at the time of the feoffment, &c. that his wife may well enter, &c.

Bract. fol. 14. Britton fol. 88. a. Fleta lib. 3. cap. 3.

MES que il poet enter bien, &c. Here is implied that he might enter either within age, or at any time after full age, and likewiſe after his death his heire may enter. Meliorem enim conditionem facere poteſt minor deteriorem nequaquam.

Nota, If ſpecial heire ſhall take advantage of the infancy of the Anceſtor. As if Tenant in taile of an Acre of the cuſtom of Weſtow Engliſh make a feoffment in fee within age, and dieth, the youngeſt ſon ſhall avoid it, for he is privy in blood, and claimeth by diſcent from the Infant.

And ſo if Tenant in taile to him and the heires females of his body make a feoffment in fee and dieth within age, having iſſue a Son and a Daughter, the Daughter ſhall avoid the feoffment. And ſo note that a cauſe to enter by reaſon of Infancy is not like to Conditions, Warranties and Eſtoppels, which ever diſcend to the heire at the Common Law.

The reſidue of this Section upon that which hath bin ſaid is evident.

Sect. 636.

SVrrender. Surſum redditio properly is a yelding up of an eſtate for life or yeares to him that hath an immediate eſtate in reverſion or remainder, wherein the eſtate for life or years may drown by mutuall agreement between them.

ITem, ſi feme enheritrix prent baron, et ont iſſue fits, et l'baron morust, et el prent auter baron, et le ſecond baron leſſa la terre que il ad en droit ſa feme a vn auter

ALſo if a woman inheritrix taketh huſband, and they have iſſue a ſon, and the huſband dieth, and ſhe takes another husband, and the ſecond husband letteth the Land which he

ter pur terme de ſa vie, et puis la feme moruſt, et puis le tenant a terme de vie ſurrendiſt ſon eſtate a le ſecond baron, &c. Quære ſi le fits le feñ poit enter en ceſt cas ſur le ſecond baron durant la vie le tenant a terme de vie, &c. Mes il eſt clare ley, q̃ apres la mort le tenant a terme de vie, le fits la feme poit enter, pur ceo que l' diſcontinuance que fuit tantſolement pur terme de vie, eſt determine, &c. per la mort de meſme le tenant a terme de vie.

hath in right of his wife to another for terme of his life, and after the wife dieth, and after the tenant for life ſurrendreth his eſtate to the ſecond huſband, &c. *Quare* if the ſon of the wife may enter in this caſe upon the ſecond husband during the life of tenant for life, &c. but it is cleer Law, that after the death of the Tenant for life the ſon of the wife may enter, becauſe the diſcontinuance which was only for terme of life, is determined, &c. by the death of the ſame Tenant for life.

Note there be three kinds of Surrenders, viz. a Surrender properly taken at the Common Law, which is here before deſcribed, and whereof Littleton ſpeaketh. Secondly, a Surrender by cuſtome of lands holden by Copy, or of cuſtomary eſtates whereof you have read before, Sect. 74. and a Surrender improperly taken (as appear before, Sect. 550.) of a Deed. And ſo of a Surrender of a Patent, and of a Rent newly created, and of a fee ſimple to the King. 3. Eliz. Dier. 176. 14 H. 8. 3 27. Aſſ. 37. 49. E. 3. 2. 11 H. 4. 2. 12. H. 4. 21. 13. H. 4. 13.

A Surrender properly taken is of two ſorts, viz. a ſurrender in Deed, or by expreſſe words, (whereof Littleton here putteth an example) and a ſurrender in Law wrought by conſequent by operation of Law. Littleton here putteth his caſe of a Surrender of an eſtate in poſſeſſion, for a Right cannot be ſurrendred. And it is to be noted that a ſurrender in Law is in ſome caſes of greater force, than a ſurrender in Deed. As if a man 14 H. 8. 15. 37 H. 6. 17. 21 H. 7. 6. 40 E. 3. 24. 31. Aſſ. 26. 50 E. 3. 6. 44. Aſſ. 3. 35 H. 8. Dier. 37 8. Aſſ. 30. 4. Ma. Dier. 141. 11. Eliz. Dier. 280. 6 H. 7. 9. 37 H. 6. 17. 21 H. 7. 6. 14 H. 7. 4. Lib. 6. f. 69. Sir Moyle Pinches caſe.

make a Leaſe for years to begin at Michaelmaſſe next, this future intereſt cannot be ſurrendred, becauſe there is no Reverſion wherein it may drown, but by a Surrender in Law it may be drowned. As if the Leſſee before Michaelmaſſe takes a new Leaſe for years either to begin preſently, or at Michaelmaſſe, this is a Surrender in Law of the former Leaſe, Fortior & æquior eſt diſpoſitio legis quam hominis.

Alſo there is a ſurrender without Deed, whereof Littleton putteth here an example of an eſtate for life of lands, which may be ſurrendred without Deed, and without Livery of ſeiſin, becauſe it is but a yeilding, or a reſtoring of the eſtate again to him in the immediate reverſion or remainder, which are always favoured in Law. And there is alſo a ſurrender by Deed, and that is of things that lie in grant, whereof a particular eſtate cannot commence without Deed, and by conſequent the eſtate cannot be ſurrendred without Deed. But in the example that Littleton here putteth, the eſtate might commence without Deed, and therefore might be ſurrendred without Deed. And albeit a particular eſtate be made of lands by Deed, yet may it be ſurrendred without Deed, in reſpect of the nature and quality of the thing demiſed, becauſe the particular eſtate might have been made without Deed; and ſo on the other ſide, If a man be Tenant by the Courteſie, or Tenant in Dower of an Advowſon, Rent or other thing that lie in grant, albeit there the eſtate begin without Deed, yet in reſpect of the nature and quality of the thing that lies in grant, it cannot be ſurrendred without Deed. And ſo if a Leaſe for life be made of lands, the Remainder for life, albeit the Remainder for life began without Deed, yet becauſe Remainders and Reverſions though they be of lands are things that lie in grant, they cannot be ſurrendred without Deed. So in my Reports plentiful matter of Surrenders. 19 H. 6. 33. 27. Aſſ. 44. 14 H. 7. 4. 8. H. 6. 1. Pl. Com. 41.

¶ *Quære ſi le fits la feme poet enter, &c.* Here Littleton maketh a Quære. So as grave and learned men may doubt without any imputation to them, for the moſt learned doubteth moſt, and the more ignorant for the moſt part are the more bold and peremptory.

It is holden of ſome, that after the ſurrender the iſſue in taile during the life of Tenant for life may enter, for that having regard to the iſſue, the ſtate for life is drowned, and conſequently the inheritance gained by the Leaſe is by the acceptance of the ſurrender vaniſhed and gone, as if Tenant in taile make a Leaſe for life, whereby he gaineth a new reverſion (as hath

bein said) if Tenant for life surrender to the Tenant in taile, the estate for life being drowned, the reversion gained by wrong is banished and gone, and he is Tenant in taile again against the opinion Obiter of Portington, 21. H 6. 53.

21. H. 6. 53.

But herein are two diversities worthy of observation. The first is, that having regard to the parties to the surrender, the estate is absolutely drowned, as in this case between the Lessee and the second baron. But having regard to strangers, who were not parties or privies thereunto, lest by a voluntary surrender they may receive prejudice touching any right or interest they had before the surrender, the estate surrendred hath in consideration of Law a continuance. As if a Reversion be granted with warrantie and Tenant for life surrender, the Grantee shall not have Execution in value against the Grantor who is a stranger during the life of Tenant for life, for this surrender shall work no prejudice to the Grantee who is a stranger.

45. E. 3 13. 5. H. 5. 9. 9. E. 4. 18.

So if Tenant for life surrender to him in reversion being within age, he shall not have his age, for that should be a prejudice to a stranger, who is to become Demandant in a real action.

40. E. 3 13. 9. F. 4. 18. 1. H. 6. 1. 24. E. 3. 77. 5. H. 5. 8. 20. Ass. 38. 7. H. 6. 2. b.

If Tenant for life grant a Rent charge, and after surrender, yet the rent remaineth, for to that purpose he cometh in under the charge. Causa qua supra.

If a Bishop be seised of a Rent-charge in fee, the Tenant of the land enfeoffe the Bishop and his Successors, the Lord enter for the Mortmain, he shall hold it discharged of the rent, for the entry for the Mortmaine affirmeth the alienation in Mortmaine, and the Lord claimeth under his estate, but if Tenant for life grant a rent in fee, and after infeoffe the Grantee, and the Lessor enter for the forfeiture, the rent is revived, for the Lessor doth claim above the Feoffment. But if I grant the reversion of my Tenant for life to another for term of his life, and Tenant for life attorne, now is the Waste of Tenant for life dispunishable. Afterwards I release to the Grantee for life and his heires, or grant the reversion to him and his heires, now albeit the Tenant for life be a stranger to it, yet because he attorned to the Grantee for life, the estate for life which the Grantee had, shall have no continuance in the eye of the Law as to him, but he shall be punished for waste done afterward.

48. E. 3. 16.

The second diversity is, that for the benefit of an estranger the estate for life is absolutely determined. As if he in the reversion make a Lease for years or grant a Rent-charge, &c. and then the Lessee for life surrender, the Lease or rent shall commence maintenant. So in the case of Littleton, first between the Lessee, and the second husband, the state for life is determined, and secondly for the benefit of the issue it shall be so adiudged in Law. Here note a diversity, when it is to the prejudice of a stranger, and when it is for his benefit.

If a man maketh a Lease to A. for life, reserving a rent of 40 shillings to him and his heires, the remainder to B. for life, the Lessor grant the reversion in fee to B. A. attorne, B. shall not have the rent; for that although the fee simple do drown the remainder for life between them, yet as to a stranger it is in esse, and therefore B. shall not have the rent, but his heir shall have it.

Adjudge Mich. 16. & 17. Eliz. int. Turner Pl. & Gray, def. in ejectione firmæ in Communi banco Rot. 945. Sir Francis Flemings case.

If Master of an Hospital being a sole Corporation, by the consent of his brethren make a Lease for years of part of the possessions of the Hospital, afterwards the Lessee for years is made Master, the term is drowned, for a man cannot have a term for years in his own right, and a freehold in autre droit to consist together (as if a man Lessee for years take a feme Lessor to wife.) (a) But a man may have a freehold in his own right and a terme in autre droit, and therefore if a man Lessor take the same feme Lessee to wife, the term is not drowned, but he is possessed of the term in her right during the Coverture. (b) So if the Lessee make the Lessor his Executor, the terme is not drowned. Causa qua supra.

(a) 6. H. 4. 7. Pl. Com. 418.

(b) 32. H. 8. Br. surrender 52.

But if it had been a Corporation aggregate of many, the making of the Lessee Master had not extinguished the term, no more than if the Lessee had been made one of the brethren of the Hospital.

Sect. 637.

Vide Sect. 658.

VN fois. Here it is to be observed that it is not necessary that the Tenant in taile be ever seised of an estate taile at the time when the Discontinuance of the whole estate is begun, as if Tenant in taile make a lease

NOta que vn estate taile ne poit este discontinue, mes la ou cestuy que fait le discontinuance fuit vn foits seisie per force de le taile, sinon que

NOte, that an estate taile cannot be discontinued, but there where he that makes the discontinuance was once seised by force of the taile, unless it be

que soit per reason de garrantie, &c. Come il soit aiel, pier, & fits, et layel soit tenant en taile, et est dissleisie per le pier que est son fits, et le pier fait un feoffment de ceo sans garranty et deuie, et puis laiel deuie, l'fits bien poit enter sur le feoffé, pur ceo que ceo ne fuit pas discontinuance, entant que le pier ne fuit seisie per force de le taile al temps del feoffm̃t, &c. mes fuit seisie en fé per le dissleisin fait al ayel.

by reason of a warranty, &c. As if there be grãdfather, father, & son, & the grandfather is tenant in taile, & is disseised by the father who is his son, and the father maketh a feoffment of this without warranty & die, & afterwards the grãdfather dies, the son may wel enter upõ the feoffee, because this was no discontinuance, inasmuch as the father was not seised by force of the entaile at the time of the feoffment, &c. but was seised in fee by the disseisin of the grandfather.

for life, whereby he gaineth as hath been said, a fee simple by wrong, in this case if he grant the reversion in fee, and the Lessee dieth, the whole estate is discontinued, and yet at the time of the grant (by which the Discontinuance continueth) he was not seised by force of the taile, and therefore Littleton materially adden these words (Vn fois) that is, that he was once seised by force of the estate taile: and seeing that (as hath been said) a Discontinuance is a privation, the rule of Law agreeth well with the rule of Philosophie, that Omnis privatio præsupponit habitum, and therefore he cannot discontinue that estate which he never had. Vide Sect. 592. 596, 597. 601. 640. 658.

¶ *Sinon que il soit per reason del garrantie, &c.* For in many cases a warranty added to a Conveyance is said to make a discontinuance Ab effectu, although he that made the conveyance was never seised by force of the estate taile, because it taketh away the entry of him that right hath, as a Discontinuance doth. As if Tenant in taile be disseised and dieth, and the issue in taile release to the Disseisor with warranty; in this case the issue was never seised by force of the taile, and yet this hath the effect of a Discontinuance by reason of the warranty, and the reason hereof appeareth before in this Chapter. 9.E.4.19. 12.E.4.11. 21.E.4.97.

¶ *Le fits poet enter.* But if the Father that made the Feoffment had survived the Grandfather, he should never have entred against his own Feoffment, but albeit the Father had survived, yet after his decease the Sonne should have entred for the reason here prouided by Littleton. But if the Feoffment had been with warranty, then it had wrought the effect of a Discontinuance, and therefore Littleton saith Sans Garranty, without warranty. 15.E.4. Discont. 30. & entr. Cong. 21. 21.E.4.97. 9.E.4.19. 39.H.6.45. 21.H.6.52. 12.E.4.11. 1.Mar. Dier, 98.

Sect. 638.

¶ Item, si Tenant en Taile fait vn lease a vn auter pur terme de vie, et le Tenant ẽ taile ad Issue et deuie, et le reuersion descendist a son Issue, et puis lissue granta le reuersion a luy discendue a vn auter en fé, et le tenant a terme de vie attourna & deuie, et le Grantee del reuersion enter, &c. et est seisie en fé en la vie del Issue, et puis issue en le taile ad issue fits et deuie, il semble

ALso if Tenant in Taile make a Lease to another for term of life, and the Tenant in Tayle hath Issue and dieth, and the Reversion descendeth to his Issue, and after the Issue granteth the reversion to him descended, to another in Fee, and the Tenant for life attorne and die, and the Grantee of the Reversion enter, &c. and is seised in Fee in the life of the Issue, and after the Issue in Tayle hath

bie que ceo neſt pas diſcontinuance a le fits, mes que le fitz poit enter, &c. pur ceo que ſon pier a que le reuerſion de fee ſimple diſcendiſt, &c. nauoit vniques riens en la terre, per force de le Taile, &c.

Iſſue a ſon and dieth, it ſeems that this is no diſcontinuance to the ſon, but that the ſon may enter, &c. for that his father, to whom the reverſion of the fee ſimple deſcended, had never any thing in the land by force of the entaile, &c.

25. E. 4. Diſcont. 30. 43. Ed. 3. 6. 21. H. 6. 52. 4. H. 7. 17.

21. H. 6. 52, 53.

OF this opinion is Littleton in our Books. *Le Grantee del reuerſion enter, &c.* Here it is to be underſtood and obſerved, That in this caſe of the grant of the Reverſion Littleton doth not ſay Sans garrantie, becauſe if a Warrantie had been added, it had wrought no diſcontinuance, for that (as hath been ſaid) the Diſcontinuance in iudgement of Law was but for life: but when the addition of a warranty doth work a Diſcontinuance, then Littleton ſaith, Sans garrantie, as you may obſerve often in this Chapter.

Sect. 639.

CAr ſi home ſeiſie en droit ſa feme, leſſa meſme la Terre a vn auter pur terme de vie, ore eſt le reuerſion de fee ſimple a le Baron, &c. Et ſi le Baron morust, viuant ſa feme et le Tenant a terme de vie, et le reuerſion diſcendiſt al heire le Baron, ſi le heire le Baron grant le reuerſion a vn auter en fee, et le tenant atturna, &c. et puis le tenaunt a terme de vie morust, et le Grantee del Reuerſion en cel Caſe enter: En ceſt caſe ceo neſt pas Diſcontinuance a le Feme, mes le feme bien poit enter ſur le Grantee, &c. pur ceo que le grantor nauoit riens al temps del Graunt, en le droit la Feme, quant il fiſt le graunt del Reuerſion.

FOr if a man ſeiſed in the right of his Wife, letteth the ſame land to another for term of life, now is the reverſion of the Fee Simple to the Husband, &c. and if the Husband dieth, living his Wife, and the Tenant for life, and the Reverſion deſcend to the heir of the Husband, if the Heir of the Huſband grant the reverſion to another in Fee, and the Tenant attorne, &c. and afterwards the Tenant for life dieth, and the Grantee of the reverſion in this caſe enter: In this caſe this is no diſcontinuance to the wife, but ſhe may well enter upon the Grantee, &c. becauſe the grantor had nothing at the time of the Graunt, in the right of his Wife when he made the Graunt of the Reverſion.

14. E. 3. Diſcont. 5. 18. Aſſ. p. 2. 18. E. 3. 54. 38. E. 3. 32. 22. H. 6. 34. 21. H. 6 32, 53. 15. E. 4. Diſcont. 30.

CAr ſi home ſeiſie en droit ſa feme, leſſa, &c. Here Littleton putteth his caſe where the Baron only makes a Leaſe for life, for if he and his wife ioyne in a Leaſe by Deed, there the Reverſion is not diſcontinued. See before, Sect. 620. More need not to be ſaid hereof, in reſpect the like caſe of Tenant in taile hath been explained before.

Sect.

Sect. 640, 641.

ET illint il ſemble, coment que homes queux ſont inheritables per force de le Taile, et its ne fueront vnques ſeiſies per force de meſme le Taile, que tiel feoffements ou grants p eux fait ſans clauſe de Garrantie, nē pas diſcontinuance a lour iſſues apres lour deceaſe, mes que lour Iſſues poyent bien enter, &c. coment que ceux queux fierent tielz grants en lour vies fueront forbarres dentrer per lour Fait demeſne, &c.

AND ſo it ſeemeth, that men which are inheritable by force of an Entaile, and never were ſeiſed by force of the ſame entaile, that ſuch Feoffements or grants by them made without clauſe of warranty, is no diſcontinuance to their Iſſues after their deceaſe, but that their Iſſues may well enter, &c. albeit they which made ſuch Graunts in their lives were forebarred to enter by their own act, &c.

Sect. 641.

ET ſi le tenant en Tail ad iſſue deux fits, et leigne diſſeiſt ſon pier, et ent fait feoffment en fee ſans clauſe de Garrantie, et deuie ſans Iſſue, & puis le pier deuie, le puiſn fits poit bien enter ſur le feoffee, pur ceo que le feoffment ſon eigne frere ne poit eſtre diſcontinuance, pur ceo que il ne fuit vnques ſeiſie p force de meſme le Taile. Car il ſemble encounter reaſon, que per matter en fait, &c. ſans clauſe de Garrantie, home poit diſcontinuer vn fait, &c. que ne fuit vnques ſeiſie per force de meſme le Taile.

AND if Tenant in Tail hath Iſſue two Sons, and the eldeſt diſſeiſeth his Father, & thereof maketh a Feoffement in Fee, without clauſe of Warranty, and die without iſſue, and after the father die, the youngeſt ſon may well enter upon the Feoffee, for that the Feoffement of his elder brother cannot be a diſcontinuance, becauſe he was never ſeiſed by force of the ſame Tayle. For it ſeemeth to be againſt reaſon, that by matter in fact, &c. without clauſe of Warrantie, a man ſhould diſcontinue a Deed, &c. that was never ſeiſed by force of the ſame Taile.

NOte, there alſo in theſe two Sections appeareth, That (as hath been ſaid before) a Warranty, though he were never ſeiſed by force of the Taile may work the effect of a Diſcontinuance. Vide Sect. 592, 596, 597. 601, 658.

Home poet diſcontinuer vn fait, &c. This is miſtaken, and ſhould be, Home poet diſcontinuer vn taile, and ſo is the Original.

Sect.

Sect. 642.

¶ Nota ſi ſoit Sñr et tenãt, et le tenant dona les tenements a vn auter en taile, le remainder a vn auter en fée, et puis le tenant en taile fait vn leas a vn home pur terme de vie, &c. ſauant le reuerſion, &c. & puis granta le reuerſion a vn auter en fée, et le tenant a terme de vie atturna, &c. et puis le grantée del reuerſion moruſt ſans heire, ore meſme le reuerſion deuient al ſeignior per voy deſcheate. Si en ceſt cas, le tenant a terme de vie deuiaſt, et le Seignior per force de ſon eſcheate enter en la vie le tenant en le taile, et puis le tenant en le taile moruſt, il ſemble en ceo cas que ceo neſt pas diſcontinuance al iſſue en le taile ne a celuy en le remainder, mes que il poit bien enter pur ceo que le Seignior eſt eins per voy deſcheat, et nemy per le tenant en le taile, &c. Mes ſecus eſſet, ſi le reuerſion vſt eſſe execute en le grantée en le vie le tenant en le taile, car adonque vſt le grantée eſſe eins en les tenements per le tenant en le tayle, &c.

NOte if there be Lord and Tenant, and the Tenant giveth lands to another in taile, the remainder to another in fee, and after the Tenant in taile makes a leaſe to a man for term of life, &c. ſaving the reverſion, &c. and after granteth the reverſion to another in fee and the tenant for life attorne, &c. and after the Grantee of the reverſion die without heire, now the ſame reverſion cometh to the Lord by way of eſcheat. If in this caſe the Tenant for life dieth and the Lord by force of his eſcheate enter in the life of Tenant in taile, and after the Tenant in taile dieth, it ſeemeth in this caſe that this is no diſcontinuance to the iſſue in taile, nor to him in the remainder, but that he may well enter, becauſe the Lord is in by way of eſcheat, and not by the Tenant in taile, but otherwiſe it ſhould be, if the reverſion had been executed in the Grantee, in the life of Tenant in taile, for then had the Grantee been in the Tenements by the Tenant in taile, &c.

Vide Sect. 620.

¶ The reaſon of this caſe is here rendred (as before it was in this Chapter) that albeit the reverſion be executed in the Lord by eſcheat in the life of Tenant in taile, yet becauſe he is not in by the Tenant in taile but by eſcheat, it worketh no Diſcontinuance. But if it had been executed in the life of Tenant in taile in the Grantee (which was in by Tenant in taile) then the Lord by eſcheat ſhould have taken advantage of it. But of this ſufficient hath been ſaid before in this Chapter.

Lib. 1. fol. 136.
Lib. 3. fol. 62, 63.

Sect. 643, 644, & 645.

¶ *Parcel de ſon Glebe, &c.* In whom the fee ſimple of the

¶ Item ſi vn parſon dun Eſglíſe, ou vn Vicar dun Eſglíſe

ALſo if a Parſon of a Church or a Vicar of a Church alien

Eſglise, alien certain terres, ou tenements parcel de ſon glebe, &c. a vn auter en fée, et morust, ou resigne, &c. ſon ſucceſſor poit bien enter, nient contrestant tiel alienation, come est dit en vn Nota 2.H.4. Terme Mich. quod ſic incipit.

certain Lands or Tenements parcel of his Glebe, &c. to another in fee, and die or reſign, &c. his ſucceſſor may well enter notwithſtanding ſuch alienation, as is ſaid in a *Nota* 2.*H.*4. *Termino Mich.* which beginneth thus.

Sect. 644.

NOta quod dictum fuit pro lege en vn briefe de accompt poet per vn maſter dun college, vers vn Chapleine, que ſi vn Parſon, ou vn Vicar, graunt certaine terre, quel est de droit ſon Eſglise a vn auter & deuie, ou permute, le ſucceſſor poit enter, &c. Et ieo croy que la cauſe eſt, pur ceo que le Parſon, ou Vicar, que eſt ſeiſie, &c. come en droit de ſon Eſglise, nad pas droit de fée ſimple en les tenements, et le droit de fée ſimple de ceo demurt en aſcun auter perſon, et pur cel cauſe ſon ſucceſſ. poit bien enter, nient contrestant tiel alienation, &c.

Nota quod dictum fuit pro lege, in a Writ of Account brought by a Maſter of a College againſt a Chaplaine, that if a Parſon or Vicar grant certain Land, which is of the right of his Church to another and die, or changeth, the Succeſſor may enter, &c. And I take the cauſe to be, for that the Parſon or Vicar that is ſeiſed, &c. as in right of his Church hath no right of the fee ſimple in the tenements, but the right of the fee ſimple abideth in another perſon; And for this cauſe his Succeſſour may well enter, notwithſtanding ſuch alienation, &c.

glebe is, is a queſtion in our bookes: (a) ſome hold that it is in the Patron, but that cannot be for two reaſons, firſt, for that in the beginning the land was given to the parſon and his Succeſſors, and the patron is no Succeſſor. Secondly, the words of the writ of Juris utrum be, ſi ſit libera Eleemoſina Eccleſiæ de D. and not of the patron. Some others do hold that the fée ſimple is in the patron and Ordinary, but this cannot be for the cauſes abovesaid: and therefore of neceſſity the fée ſimple is in abeyance as Littleton ſaith. And this was provided by the providence and wiſdom of the Law; for that the parſon and Vicar have Curam animarum, and were bound to celebrate Divine Service, and adminiſter the Sacraments, and therefore no Act of the predeceſſor ſhould make a Diſcontinuance to take away the entry of the Succeſſor, and to drive him to a real action whereby he ſhould be deſtitute of maintenance in the mean time; upon conſideration of all our books I obſerve this diverſity, that a parſon or Vicar for the benefit of the Church and of his Succeſſor is in ſome caſes eſteemed in Law to have a fée ſimple qualified, but to do any thing to the prejudice of his Succeſſor in many caſes, the Law adjudgeth him to have in effect but an eſtate for life, Cauſæ Eccleſiæ publicis cauſis æquiparantur, and ſumma ratio eſt quæ pro religione facit. And Eccleſia fungitur vice minoris, melioremfacere poteſt conditionem ſuam, deteriorem nequaquam.

(a) 8 H.6.24.12 H.8.8.

Vide Regiſtr.307.a. 45 E.3.tit. Eſchange. 12.H.8.9.

F.N.B.19.L.

Bracton lib.4.fol.220.

Brit.fol.148.

As a Parſon, Vicar, Archdeacon, Prebend, Chantery Prieſt, and the like may have an Action of Waſte, and in the writ it ſhall be ſaid, ad exhæredationem Eccleſiæ, &c. ipſius B. or Præbendæ ipſius A.

F.N.B.55.D.& 57.B. & 10 H.7.5.

And the parſon, &c. that maketh a Leaſe for life, ſhall have a Conſimili caſu during the

F.N.B. 49. l. m. n. 10 E. 3. tit. Juris utrum. Temps E. 3. Juris utrum 14. 1. 14 E. 3. ibid. 4. F.N.B. 50. 30 E. 3. 26 21 E. 3. 11. tit. Entrie 10. F.N.B. 205. F. Regiſtr. 237. 4 E. 4. 2. 8 E. 3. tit. Entrie 3. 7 E. 3. 54, 55.

the life of the Leſſee and a writ of entry ad communem legem after his death, or a writ Ad terminum qui præterijt, or a quod permittat in the deuer, and none can maintain any of theſe Writs, but a Tenant in fee ſimple or fee tayle.

And a Parſon, &c. may receive homage, which Tenant for life cannot do, Temps E. 1. Incumbent 19.

(c) F.N.B. 49. l. 50. a.

(c) Likewiſe a Parſon, &c. ſhall have a writ of meſne and a Contra formam feoffamenti.

But a Parſon cannot make a diſcontinuance as Littleton here teacheth, for that ſhould be to the preiudice of his Succeſſor to take away his entry, and to driue him to a real action.

And if a parſon, &c. make a leaſe for yeares reſerving a rent & dieth, the leaſe is determined by his death, as if Tenant for life had made a leaſe, nor acceptance of the rent by the Succeſſor can make it good. Alſo in a real action a Parſon, Vicar, Prebendary, Prebend, &c. ſhall have aid of the Patron and Ordinary as tenant for life ſhall have. So as it is euident that to many purpoſes a Parſon hath but in effect an eſtate for life and to many a qualified fee ſimple, but the entire fee and right is not in him, and that is the reaſon that he cannot diſcontinue the fee ſimple that he hath not, nor ever had, for as it hath been ſaid, Omnis privatio præſupponit habitum. And for the ſame cauſe he cannot have a Writ of right right, nor a Writ of right in his nature, as a Writ of Right Sur diſclaimer of cuſtomes and ſervices, Ne injuſte vexes, rationabilibus diviſis, quo jure, and the like.

20 E. 3. tit. Aid. 39. 25 E. 3. 54. 8 E. 3. 45 8 H. 6. 24 11 H. 6. 9. 6 E. 3. 45. 43. Aſſ. Pl. 13. F.N.B. 129.

But here it appeareth by Littleton that ſuch bodies politick or corporate as have a fee ſimple, and may have a writ of right for that the fee and right is in them (albeit they cannot abſolutely convey away their Lands, &c. without aſſent of others) may make a Diſcontinuance, as a Biſhop, an Abbot, a Dean, a Maſter of an Hoſpital, and the like. But this is to be underſtood where a Dean or a Maſter of an Hoſpital, &c. are ſolely ſeiſed of diſtinct poſſeſſions, for if the body that is ſeiſed be aggregate of many, as the Dean and Chapter, Maſter and Confreres, &c. then the feoffment of the Dean or Maſter is ſo farre from a Diſcontinuance as it is a diſſeiſin.

And theſe that have the fee and right in them ſhall not have aid in reſpect of their high and large eſtate, albeit any of them be preſentable: but a Dean that is collative ſhall have aid of the King.

24 E. 3. 11. 11 H. 4. 68. 9 E. 4. 16. 18 E. 3. 7. 6 E. 2. Aid 167. 12 H. 4. 11. 32 E. 3. Aid. 39. 38 E. 3. 19. 14 E. 3. Juris utrum 4.

And it is to be obſerved, that the remedy is ever agreeable to the right, and therefore the Biſhop, Dean, Maſter of an Hoſpital, that hath College and common Seal, or the like, ſhall have a writ of Right Right, which is the higheſt remedy, for that they have the higheſt eſtate.

Here

Sect. 645.

CAr vn Eueſq̃ poit auer bꝛe de dꝛoit de tenements de dꝛoit de ſon Eſgliſe, pur ceo que le dꝛoit eſt en ſon Chapiter, et le fee ſimple demurrant en luy et en ſ̃ Chapiter. Et vn Deane poit auer bꝛe de dꝛoit pur ceo que le dꝛoit demurt ẽ luy. Et vn Abbe poit auer bꝛiefe de dꝛoit, p̃ ceo que le dꝛoit demurt en luy, et en ſon couent. Et vn Maſter dun Hoſpital poit auer bꝛiefe de dꝛoit, pur ceo que le dꝛoit demurt en luy, et en ſes confreres, &c. Et ſic de aliis caſibus conſimilibus. Mes vn Parſon ou vn Vicar ne poit auer bꝛiefe de dꝛoit, &c.

FOr a Biſhop may have a writ of right of the tenements of the right of his Church, for that the right is in his Chapiter, and the fee ſimple abideth in him and in his Chapiter. And a Dean may have a writ of right, becauſe the right remains in him. And an Abbot may have a writ of right for that the right remains in him and in his Covent. And a Maſter of an Hoſpital may have a Writ of right, becauſe the right remaineth in him and in his Confreres, &c. And ſo of other like caſes. But a Parſon or Vicar cannot have a Writ of Right, &c.

Here Littleton citeth the Book-Caſe, Mich. 2. H. 4. as an authority whereupon he groundeth his opinion. And it is to be obſerved, that the yeares of H. 4. were publiſhed before Littleton did write.

But at this day, the Biſhop, Dean, Maſter of an Hoſpital, or the like that have the fee and right in them, as hath been ſaid, cannot diſcontinue, neither can they or any Parſon, Vicar, Archdeacon, Prebend, or any other having any Eccleſiaſtical Living with aſſent of Dean and Chapter, Patron and Ordinary, or the conſent of any others make any Leaſe, Gift, Grant or Conveyance, Eſtate, Charge or Incumberance to binde his Succeſſor other than for terme of one and twenty yeares, or three lives in poſſeſſion, whereupon the accuſtomed Rent or more ſhall be reſerved. Theſe be excellent Laws, and have been well expounded for the maintenance of Religion, and the good of Gods Church, for otherwiſe it is to be feared that holy Church would loſe more than it would gain in theſe dayes. Vide Sect. 557. 593, &c. 1. Eliz. c. 18. 13. Eliz. c. 10. 1 Jacobi cap. 3.

But where Littleton in this and other Sections make mention of Maſters of Hoſpitals, the Reader muſt know, that ſince Littleton wrote, there hath been a great alteration made by divers Acts of Parliament concerning Hoſpitals. Lib. 2. fol. 46. Lib. 4. fol. 70. & 20. Lib. 5. fol. 9. & 14. Lib. 6. fol. 37. Lib. 7. fol. 8. Lib. 11. fol. 67. 37. H. 8 31. H. 8. 32. H. 8. 37. H. 8. 1. E. 6, &c.

¶ *Maſter del Hoſpital.* Theſe points concerning Hoſpitals were reſolved (c) by the Juſtices. (c) Paſch. 34. Eliz. The Lord Cheneyes caſe. Lib. 2. fol. 48, 49. Euelque de Canterburies caſe.

Firſt, That no Hoſpital was given to the Crown by the Statute of 27. H. 8. nor any Hoſpital is within the Statute of 31. H. 8. of Monaſteries, but only religious and Eccleſiaſtical Hoſpitals, and that no Lay Hoſpitals was within thoſe Statutes.

Secondly, If upon the foundation of any lay Hoſpital or after it was ordained, That one or divers Prieſts ſhould be maintained within the Hoſpital to celebrate Divine Service to the poor, and to pray for the ſoul of the Founder, and all Chriſtian ſouls, or the like, and that the poor of ſuch Hoſpital ſhould make the like Oriſons, yet ſuch an Hoſpital is not within the ſaid Statutes, for the Hoſpital is Lay, and not Religious, and all or the moſt part of ancient Lay Hoſpitals were founded or ordained after the like faſt, and the makers of thoſe Statutes never intended to overthrow works of Charity, but to take away the abuſe.

Thirdly, That no Hoſpital was given to the King by the Statutes of 37. H. 8. but in two caſes, where the Donors, Founders or Patrons, &c. had entred and expulſed the Maſter, Wardens, &c. between the fourth day of February, Anno 27. H. 8. and the five and twentieth of December, Anno 37. H. 8. or where King Henry the eighth by Commiſſion according to that Act ſhould enter and ſeiſe the ſame, but that determined by the death of that King. Lib. 1. f. 24. Porters caſe. Porters caſe ubi ſupra.

Fourthly, That the Statute of 1. E. 6. extended not to any Hoſpital whatſoever either Lay or Religious, as by the ſame appeareth. Lib. 4. 111. 113. 114. 116 In Lamberts caſe.

And I was of Counſel with the Lord Cheney in this caſe, which, ſeeing it may do good for maintenance of Charitable uſes, I thought good ſummarily to report it, to this I will adde Panis pauperum vita pauperum, qui defraudat eos vir ſanguinis eſt. Eccleſiaſticus c. 34. v. 22.

Nota, of Hoſpitals ſome are Corporations aggregate of many, as of Maſter or Warden, &c. and his Confreres: ſome where the Maſter or warden hath only the eſtate of Inheritance in him, and the brethren or ſiſters power to contract having Colledge and Common Seal: Some where the Maſter or Warden hath the eſtate in him, but hath no Colledge and Common Seal, and ſuch a Maſter or Warden ſhall have a Juris utrum: and of theſe Hoſpitals ſome be eligible, ſome donative, and ſome preſentable. 14 E. 3. Juris utrum. 4.

Sect. 646.

¶ Mes l'pluis haut briefe q̃ ils poient auer eſt briefe de Juris utrum, le quel eſt graund proofe que le droit de fee neſt en eux ne en nul autres, &c. Mes le droit de fee ſimple eſt en abeiance, &c. ceo eſt adire, que il eſt tantſolement en le remembrance, entendement, & conſideration de la ley, &c. Car moy ſemble que tiel choſe

But the higheſt Writ that they can have is the Writ of *Juris utrum*, which is a great proofe that the right of fee is not in them, nor in any others, &c. but the right of the fee ſimple is in abeiance, that is to ſay, that it is only in the remembrance, intendment and conſideration of

choſe et tiel droit que eſt dit en diuers Lieurs eſtre en abeyance, eſt a tant adire en Latyne (S.) Talis res, vel tale rectum quæ vel quod non eſt in homine adtunc ſuperſtite, ſed tantummodo eſt, & conſiſtit in conſideratione, & intelligentia Legis, & quod alii dixerunt, talem rem aut tale rectum fore in nubib⁹. Mes ieo ſuppoſe que ils intenderont pur ceux parols, In nubibus, &c. come ieo aye dit adeuant.

the Law, &c. for it ſeemeth to me, That ſuch a thing, and ſuch a right which is ſaid in divers books to be in abeyance, is as much to ſay in Latine, (S.) *Talis res, vel tale Rectum quæ vel quod non eſt in homine adtunc ſuperſtite, ſed tantummodo eſt, & conſiſtit in conſideratione & intelligentia legis, & quod alii dixerunt, talem rem aut tale rectum fore in nubibus.* But I ſuppoſe, that they mean by theſe words, (*In nubibus, &c.*) as I have ſaid before.

24. E. 3. 6. 8. Vi. Sect. 648, 649, 650, 651. Vide Sect. 1.

EN *abeiance*. That is in expectation, of the French word Bayer to expect. For when a Parſon dieth, we ſay that the freehold is in Abeyance, becauſe a Succeſſor is in expectation to take it, and here note the neceſſity of the true interpretation of words.

If Tenant Pur terme dauter vie dieth, the freehold is ſaid to be in Abeyance until the occupant entreth. If a man make a Leaſe for life, the remainder to the right heirs of I. S. the fee ſimple is in Abeyance until I. S. dieth. And ſo in the caſe of the Parſon, the fee and right is in Abeyance, that is in expectation, in remembrance, entendment or conſideration of Law, 1. In conſideratione ſive intelligentia legis, becauſe it is not in any man then living, and the right that is in Abeyance is ſaid to be In nubibus in the Clouds, and therein hath a quality of ſome Philoſophy.

Virg. 4. Æneid.

Inſequiturque ſolo, & caput inter nubila condit.

Sect. 647.

ITē, ſi vn parſon dun eſgliſe deuie, ore le franktenement del glebe del parſonage eſt en nulluy durant le temps que le parſonage eſt voide, mes in abeiance, ceſtaſcauoir, in conſideration e en le intelligence de le ley, tanque vn auter ſoit fait parſon de meſme leſgliſe, et immediat quant vn auter eſt fait parſon, le franktenement en fait eſt en luy come ſucceſſor.

ALſo if a Parſon of a Church dieth, now the freehold of the glebe of the Parſonage is in none during the time that the Parſonage is void but in abeiance, *viz.* in conſideration and in the underſtanding of the Law until another be made Parſon of the ſame Church, and immediately when another is made Parſon, the freehold in Deed is in him as Succeſſor.

Bract. li. 1. c. 9. Brit. f. 249.

SI *vn Parſon dun Eſgliſe deuie, &c.* So it is of a Biſhop, Abbot, Dean, Archdeacon, Prebend, Vicar, and of every other ſole Corporation or body politick preſentative, elective, or donative, which inheritances out in abeyance are by ſome called Hæreditates jacentes, and ſome ſay, Que le fee eſt en balaunce.

Sect.

Sect. 648.

¶ Item, aſcuns peradventure violēt arguer & dire, que entant que vn parſon que iellent del patron & ordinarie poit grāter vn rent charge hors del glebe del parſonage en fée, et iſſint charger le glebe del parſonage perpetualment, ergo ils ont fée ſimple, ou deux, ou vn de eux, auoit fée ſimple al meins. A ceo poit eſtre reſpondue, que il eſt principle en le ley, que de cheſcuns terres il y ad fée ſimple, &c. en aſcun home, ou autrement le fée ſimple eſt an abeyance. Et vn auter principle eſt, Que cheſcun terre de fée ſimple poit eſtre charge de vn Rent-charge en fée pur vn hoy, ou per auter. Et quant tiel rent eſt graunt per le fait le Parſon & l'Patron, et Ordinarie, &c. en fée, null auera preiudice ou parde y force de tiel Grant forſque les Grantors en lour vies, & les Heires le Patron, et les ſucceſſors del Ordinary apres lour decreaſe. Et apres tiel charge, ſi le

ALſo ſome peradventurewil argue and ſay, that inaſmuch as a Parſon with the aſſent of the Patron and Ordinary, may grāt a rent charge out of the Glebe of the Parſonage in fee, and ſo charge the glebe of the Parſonage perpetually, *ergo* they have a Fee ſimple, or two or one of them have a fee ſimple at the leaſt. To this may be anſwered, That it is a Principle in Law, That of every land there is a Fee ſimple, &c. in ſome body, or otherwiſe the fee ſimple is in abeyance. And there is another Principle, that every Land of Feeſimple may be charged with a Rent charge in Fee by one way or other. And when ſuch Rent is granted by the Deed of the Parſon, & the Patron, and Ordinary, &c. in Fee, none ſhall have prejudice or loſs by force of ſuch Grant, but the Grantors in their lives, and the Heires of the Patron, and the ſucceſſours of the Ordinary after their deceaſe. And after ſuch charge

¶ *Il eſt vn Principle en la Ley, &c.* Principium, quod eſt quaſi primum caput, things which many caſes have their original or beginning, which is ſo ſtrong, as it ſuffereth no contradiction; and therefore it is ſaid in our Books, that ancient principles of the law (a) ought not to be diſputed, Contra negantem principia non eſt diſputandum. That which our Author here calleth a Principle, Sect. 3. & 90. he calleth a Maxim. (a) 11. H. 4. 9. Sect. 3. & 90.

Here Littleton in anſwer to an objection alleageth two Principles. Firſt,

¶ *Que de cheſcun terre il y ad Fee ſimple, &c.* This is perſpicuè verum and needeth no explanation. Secondly,

¶ *Cheſcun terre de Fee ſimple poet eſtre charge en Fee per vn voy ou auter.* Hereby is appeareth, That albeit the right of the Fee ſimple be in abeyance, yet it may be charged by one way or another. And ſo it may be aliened in Fee, albeit the right of the fee be in abeyance, or in conſideration of Law. And herein is a diverſity worthy the obſervation to be made, That when the right of Fee ſimple is perpetually by judgement of Law in abeyance, without any expectation to come in eſſe, there he that hath the quantum ad concurrentibus his quæ in jure requiruntur, may charge or alien it, as in the caſe of Parſon, Vicar, Prebend, &c. But where the Fee ſimple is in abeyance, and by poſſibility may every houre come in eſſe, there the fee ſimple cannot be charged until it cometh in eſſe. As if a Leaſe for life be made, the remainder to the right heires of I. S. the Fee ſimple cannot be charged

charged till I. S. be dead. And ſo is Littleton to be underſtood, viz. that either it may be charged in præſenti or in futuro.

¶ *Chescun Terre de Fee ſimple.* Note in this of Lands omitted, for they may be charged: But alſo, for the Glebe Lands may be cut off by a Diſcontinuance. Alſo the Manor Lands may continue, and yet Commit in tolle may diſtrain the charge the Lands and Tenants the Glebe in Caſe. As if a Biſhop makes a gift in Tayle, and the Donee in conſideration of a Penſion by the Biſhop and his right to the Donee, granted a rent charge to the Biſhop and his heirs, perpetuall out of the Lands of his right, this ſhall binde the Iſſue in Tayle: Vide Sect. 1. Bridgewaters Caſe: which Lands by the rule of Littleton may be charged; and therefore if the owner of thoſe thirteen acres grant a Rent charge out of thoſe thirteen Acres generally, lying in the Meadow of eighty, without mentioning where they lie particularly, there as the ſtate in the land remayns, the charge ſhall remayne alſo. But ſince que Author hyred all Eccleſiaſtical perſons are reſtrained to charge in Fee any of their Eccleſiaſtical poſſeſſions, as before hath been ſpoken of at large.

Vide Sect. 593.

¶ *Et quant tiel rent eſt grant, &c.* This is an excellent interpretation and limitation of the ſaid Statute, viz. That none ſhall have premiſſes or rents by any fained Grant, but ſuch as are proved by matter of Record, as the Patron and his heirs, the Ordinary and his Succeſſors, and the Parſon and his Succeſſors, of the Benefice to be obtained by the Patron or his heirs, and admitted and inſtituted by the Ordinary or his Succeſſors. The like is to be ſaid of an Archdeacon, Prebend, Vicar, Chantery Prieſt, and the like.

3 E.1.tit.Grant.90. 8.R.2.Annuit.53.

¶ *Per le Patt le Parſon, & Patron, & Ordinarie, &c.* Yet if the Parſon die, and a new Parſon is inſtituted, the Patron of the aſſent of the Ordinary, or the Patron and Ordinary grant an annuity or Rent charge out of the Glebe, this ſhall (as hath been ſaid) binde the ſucceeding Parſons for ever.

16.E.3.Annuit.24. 40.E.3.30.3.E.3.17. Reg. 38.

¶ If there be Parſon, Patron, and Ordinary, and the Parſon by the ordinance and aſſent of

44.E.3.21.22.

Vide Sect. 1. Bridgewaters caſe, & 59.

Parſon deuie, ſi ſucceſſour ne poit venier a le dit Eſglife ô eſtre Parſon de meſme le Eſglife per la Ley, forſque per preſentment del Patron, et admiſſion et inſtitution del Ordinarie. Et pur cel cauſe il couient que le Succeſſor ſoy teigne content, et agreé de ceo, que ſon Patron et Ordinarie loyalmẽt ſeloyent adeuant, &c. Mes ceo neſt proofe que le Fee ſimple, &c. eſt en le Patron et Ordinarie, ou en aſcun de eux, &c. Mes la cauſe que tiel grãt de Rent charge eſt bone, eſt pur ceo que ceux queux aueront intereſt, &c. en la dit Eſglife, ſ. le Patron ſolonque la Ley temporal, et Ordinarie ſolonque la Ley ſpiritual, fueront aſſentus, ou parties a tiel charge, &c. Et ceo ſẽble eſtre la verie cauſe que tiel Glebe poit eſtre charge en perpetuitie, &c.

if the Parſon die, his ſucceſſor cannot come to the ſaid Church to be Parſon of the ſame by the Law, but by the preſentment of the Patron, and admiſſion and inſtitutiõ of the Ordinarie. And for this cauſe the Succeſſor ought to hold himſelf content, and agree to that which his Patron and the Ordinarie have lawfully done before, &c. But this is no proof that the Fee ſimple, &c. is in the Patron and the Ordinarie, or in either of them, &c. but the cauſe that ſuch grant of rent charge is good, is for that they who have the intereſt, &c. in the ſaid Church, *viz.* the Patron according to the Law Temporal, and the Ordinary according to the law ſpiritual, were aſſenting, or parties to ſuch charge, &c. And this ſeemeth to be the true cauſe why ſuch Glebe may be charged in perpetuity, &c.

of the Ordinary grant an Annuity to another, having quid-quo pro in conſideration thereof, this ſhall bind the ſucceſſor of the Parſon, without the conſent of the Patron. 6 E. 3. 4. 55. 7. E 3 40. 41 E. N. B. 152 17 E. 3 32. 39 E. 3 17 b. 11 H. 4. 68. 8 H. 3. 23.

A Church Parochial may be donative and exempt from all ordinary juriſdiction, and the Incumbent may reſign to the Patron, and not to the Ordinary, neither can the Ordinary viſit, but the Patron by Commiſſioners to be appointed by him: And by Litt. rule, the Patron and Incumbent may charge the Glebe, and albeit it be donative by a Lay man, yet mere laicus is not capable of it, but an able Clerke intra ſacros Ordines is, for albeit he come in by Lay donation, and not by admiſſion or inſtitution, yet his Function is ſpiritual, and if ſuch a Clerke donative be diſturbed, the Patron ſhall have a Quare impedit of this Church donative and the Writ ſhall ſay, Quod permittat ipſum præſentare ad Eccleſiam, &c. and declare the ſpecial matter in his Declaration. And ſo it is of a Prebend, Chantery, Chappel, donative, and the like, and no Lays ſhall incurre to the Ordinary, except it be ſo ſpecially provided in the Foundation. But if the Patron of ſuch a Church, Chantery, Chappel, &c. donative, doth once preſent to the Ordinary, and his Clerke is admitted and inſtituted, it is now become preſentable, and never ſhall be donative after, and then Lays ſhall incurre to the Ordinary, as it ſhall of other Benefices preſentable. But a preſentation to ſuch a Donative by a ſtranger, and admiſſion and inſtitution thereupon, is meerly void. And all this was reſolved by the whole Court of Kings Bench, for the Rectory parochial donative of Saint Burian in the County of Cornewal. 14 H. 7. Quar. Imp. 183. 17 E. 3. 12. 64. 14 H. 4 11. F. N. B. 33. c. 16. c. 3. bre. 660. 13 E. 4. 3. 6 H. 7. 14.

It appeareth by our Bookes, and by divers Acts of Parliament, That at the firſt all the Biſhoprickes in England were of the Kings foundation, and Donative per traditionem baculi, (id eſt) the Croſier, which was the paſtoral Staffe, & annuli, the Ring whereby he was married to the Church. And King Henry the firſt being requeſted by the Biſhop of Rome to make them elective, refuſed it: but King John by his Charter bearing date quinto Junii, anno decimo ſeptimo, granted that the Biſhoprickes ſhould be eligible. If the King doth found a Church, Hoſpital, or free Chappel donative, he may exempt the ſame from ordinary Juriſdiction, and then his Chancellor ſhall viſit the ſame. May, if the King do found the ſame without any ſpecial exemption, the Ordinary is not, but the Kings Chancellor, to viſit the ſame. Now as the King may create Donatives exempt from the viſitation of the Ordinary, ſo he may by his Charter licence any ſubject to found ſuch a Church or Chappel, and to obtain theſe ſhall be donative, and not preſentable, and to be viſited by the Founder, and not by the Ordinary. And thus began Donatives in England, whereof common perſons were Patrons. Vid. Sect. 530. 21 H. 6. 26. F. N. B. 35. c. P. N. P. 35 E. 42. A. B. 27 E. 3. 84. & 85. 8. Aſſ. 29 8 E. 3. Aſſ. 150. 18 E. Scire Fac. 11. 6 H. 7. 14. 10 H. 3. Briefe 660. 21 E. 3 60. Regiſtr. 40 Dyer 10 Eliz. f. 273 14. El. ca. 5. 2 H. 5. c. 1.

¶ *Ordinarie.* Ordinarius is he that hath ordinary juriſdiction in cauſes Eccleſiaſtical, immediate to the King and his Courts of Common Law, for the better execution of Juſtice, as the Biſhop or any other that hath exempt and immediate juriſdiction in Cauſes Eccleſiaſtical.

¶ *Ley temporel.* which conſiſteth of three parts, viz. Firſt, On the Common Law, expreſſed in our Books of Law, and judicial Records. Secondly, On Statutes contained in Acts and Records of Parliament. And thirdly, On Cuſtoms grounded upon reaſon, and uſed time out of minde, and the Conſtruction and determination of theſe do belong to the Judges of the Realm.

¶ *Ley Spirituel, &c.* That is, the Eccleſiaſtical Laws allowed by the Laws of this Realm, viz. which are not againſt the Common Law (whereof the Kings Prerogative is a principal part) nor againſt the Statutes and Cuſtoms of the Realm, and regularly according to ſuch Eccleſiaſtical Laws, the Ordinary and other Eccleſiaſtical Judges do proceed in cauſes within their Conuſance. And this Juriſdiction was ſo bounded by the antient Common Laws of the Realm, and ſo declared by Act of Parliament. The Statute of 25 H. 8. c. 19. 33 H. 6. 34. 32 H. 6. 28.

¶ *Admiſſion & Inſtitution.* In propriety of ſpæch, Admiſſion is, when the Biſhop upon examination admitteth him to be able, and ſaith, Admitto te habilem. (d) Inſtitution is, when the Biſhop ſaith, Inſtituo te rectorem talis Eccleſiæ cum cura animarum, & accipe Curam tuam & meam. (e) But ſometime in a more large ſenſe, admiſſus doth include Inſtitutus alſo, Cujus præſentatus ſit admiſſus, (i.) inſtitutus. And it is to be obſerved, That Inſtitution is a good plenarty againſt a common perſon, (but not againſt the King, unleſs he be inducted) and that is the cauſe that regularly plenarty ſhall be tried by the Biſhop, becauſe the Church is full by Inſtitution, which is a ſpiritual Act, but void or not void ſhall be tryed by the Common Law. (d) Lib. 4. f. 75. & 79. Lib. 6. f. 49. Lib. 7. f. 46. (e) W. 2. cap. 5. 13. E. 1. 22 H. 6. 27. 38 E. 3. 4.

At the Common Law if an ſtranger had preſented his Clerke, and he had been admitted and inſtituted to a Church, whereof any Subject had been lawful patron, the patron has no other remedy to recover his Advowſon, but a Writ of Right of Advowſon, wherein the Incumbent Glanuil. lib. 13. c. 18, 19. 20. Mirror cap. 5. Sect. 5. Bracton lib. 4. f. 238. 240. 244, &c. 291. Fleta. lib. 5. c. 11. 16, 17. Brit. f. 222, 223, 224.

6 E.3.28.39.52 39 E.3. 24 43 E.3.25. 4 E. 3. Quar. imp. 139. 10 E.2. Com. 22. 31 1.1. Quar. imp. 186.

Incumbent was not to be removed: and ſo it was at the Common Law, if an uſurpation had been had upon an Infant or Feme Covert, having an Advowſon by diſcent, or upon Tenant for life, &c. the Infant, Feme Covert, and he in the reverſion were driven to their Writ of Right of Advowſon; for at the Common Law, if the Church were once full, the Incumbent could not be removed, and Plenarty generally was a good Plea in a Quare impedit, or Aſſiſe of Darreine preſentment, and the reaſon of this was, to the intent that the Incumbent might quietly intend and apply himſelf to his ſpiritual Charge. And ſecondly, the Law intended, that the Biſhop that had cure of ſouls within his Dioceſſe, would admit and inſtitute an able man for the diſcharge of his duty and his own, and that the Biſhop would do right to every Patron within his Dioceſſe. But at the Common Law, if any had uſurped upon the King, and his Preſentee had been admitted, inſtituted, and inducted, (for without induction the Church had not been full againſt the King) the King might have removed him by Quare impedit, and been reſtored to his preſentation, for therein he hath a Prerogative, Quod nullum tempus occurrit Regi, but he could not preſent, for the plenarty barred him of that, neither could he remove him any way but by Action, to the end the Church might be the more quiet in the mean time: * Neither did the King recover damages in his Quare impedit at the Common Law. But the ſaid Statute (a) hath altered the Common Law in the caſes aforeſaid, as namely, Quoad hoc, quod ſi pars rea accipiat de plenitudine Eccleſiæ per ſuam propriam præſentationem, non propter illam plenitudinem remaneat loquela, dummodo breve infra tempus ſemeſtre impetretur, &c. And alſo hath provided remedy in the other caſes, as by the ſaid Act appeareth.

F.N.B.36 k 143.a. 35 E. 3.ca.3.13.R.2.ca.1. 4 H. 4 ca.21. 1 H.fol.19. *Li.6.fol.51.Li.7.fo.19. 3 H.6.Dam.17.34 H.6. 28.12 E.3.Champerty 9. 18 E.3. 2. Temps E. 1. Quar.im.181.

(a) W.2.ca.5. 13 E.1.

(g) And if the King do preſent to a Church, and his Clerke is admitted and inſtituted, yet before induction the King may repeal and revoke his preſentation. But regularly no man can be put out of poſſeſſion of his Advowſon, but by admiſſion & inſtitution upon an uſurpation by a preſentation to the Church, Cum aliquis jus præſentandi non habens præſentaverit, &c. and not by collation of the Biſhop: (h) And therefore if the Biſhop collate without title, and his Clerke is inducted, this ſhall not put the rightful Patron out of poſſeſſion, for it ſhall be taken to be only proviſionally made for celebration of divine Service until the Patron do preſent, and therefore he is not driven to his Quare impedit, or Aſſiſe of Darreine preſentment, in that caſe, but an Uſurpation by collation ſhall take away the right of Collation that is in another.

(g) 45 E.3.35.38 E.3.4-25 E.3.47.13.El.Dy.292 Reg.302,&c.18.El.Dy. 348.14.E.4.2. 7 H.4.32. 31.E.1.Quar.imp.185. W.2.ub.ſup.

(h) 17 E.3.64.

It is to be obſerved, That an uſurpation upon a Preſentation ſhall not only put out of poſſeſſion him that hath right of preſentation, but right of Collation alſo. Therefore at this day the Incumbent ſhall be removed in a Quare impedit, or Aſſiſe of Darreine preſentment, if there be not a Plenarty by ſix moneths before the Teſte of the Writ, but then the Incumbent muſt be named in the writ, or elſe he ſhall never be removed: yet at the Common Law, if the Ordinary refuſed to admit and inſtitute the Clerk of the Patron, or when any diſturbed him to preſent, ſo as he could not preſer his Clerke, he might have his Quare impedit, or Aſſiſe de Darreine preſentment, and if the Church were not full, have a Writ to the Biſhop to admit his Clerke: but ſo odious was Symonie in the eye of the Common Law, that before the Statute of W. 2. he recovered no damages. At the Common Law, if hanging the Quare impedit againſt the Ordinary for refuſing of his Clerke, and before the Church were full, the Patron brought a Quare impedit againſt the Biſhop, and hanging the Suit, the Biſhop admit and inſtitute a Clerke at the preſentation of another, in this caſe if Judgement be given for the Patron againſt the Biſhop, the Patron ſhall have a Writ to the Biſhop, and remove the Incumbent that came in pendente lite by uſurpation, for pendente lite nihil innovetur, and therefore at the Common Law it was good policy to bring the Quare impedit againſt the Biſhop as ſpeedily as might be. And it is to be obſerved, That albeit the Clerke that comes in pendente lite, by uſurpation, ſhall be removed, yet if the rightful Patron, being a ſtranger to the writ, preſent pendente lite, and his Clerke is admitted and inſtituted, he ſhall not be removed, for elſe by the bringing of ſuch Quare impedit againſt the Ordinary, the rightful Patron might be deterred of his Preſentation: and therefore ever after the Statute of Weſtm. 2. amongſt other things it was inquired ex Officio, if the Church were full, and of whoſe preſentation, &c. and if the Plaintife ſhould have a Writ to the Biſhop, and his Clerke admitted, (as in moſt caſes he ought) yet may the rightful Incumbent have his remedy by Law.

9 H.6.32.& 56. 19 H.6. 68.

18 E.2. Preſentment 20. 50 E.3.Encumbent 10. 21 H.7.8.a.& b.9. Eliz. Dyer.260. F.N.B.32.I4. H.8.31.9 E.2. Dar.Pref. 21.10 E.3.17.9 H.6.31. 30 E.3.tit.Quar imp. Stath.46 E.3.15. 9 H.6. 32.56.19 H.6.68.L.5. E.4.115.9 E.4.30.

And as it was good policy (as hath been ſaid) to bring a Quare impedit as ſpeedily as might be againſt the Biſhop, ſo it is good policy at this day to name the Biſhop in the Quare impedit, for then he ſhall not preſent by Laps. But ſeeing the Biſhop ſhall not preſent by Laps becauſe he is named in the Writ, what then, after that the time be devolved to the Metropolitan, ſhall not he preſent by Laps becauſe he is not named? To this it is anſwered, That he ſhall not in that caſe preſent by laps, for the Metropolitan ſhall never preſent or collate by laps after ſix months, but when the immediate Ordinary might have collated by Laps within the ſix moneths, and had incurred his time. And ſo it is if the time be devolved to the King

11 H.4.80.

for

for the firſt ſtep or beginning faileth, and in humane things Quod non habet principium, non habet finem. And all theſe points were reſolved (*) in a writ of Error brought by Richard Biſhop of London, and John Lancaſter againſt Anthony Lowe upon a Judgement given againſt them in a Quare impedit in the Common Place for the Church of Coinbithe. But now let us hear what our Author will ſay unto us. (*) Mich. 3. Jacobi.

Sect. 649.

ITem, ſi tenant taile ad iſſue et ſoit diſſeiſie, et puis il releſſa per ſon fait tout ſon droit a l'diſſeiſor, en ceſt caſe nul droit de taile poit eſtre en le tenant en taile, pur ceo que il auoit releas tout ſon droit. Et nul droit poit eſtre en iſſue en le taile durant le vie ſon pere. Et tiel droit del enheritance en le taile neſt pas tout oustermēt expire per force de tiel releas, &c. Ergo, il couient que tiel droit demurt en abeiance, ut ſupra, durant la vie le tenant en taile, que releſſa, &c. & apres ſon deceaſe donque eſt tiel droit maintenant en ſon iſſue en fait, &c.

ALſo if Tenant in taile hath iſſue and is diſſeiſed, and after he releaſeth by his Deed all his right to the Diſſeiſor. In this caſe no right of taile can be in the tenant in taile, becauſe he hath releaſed all his right. And no right can be in the iſſue in taile during the life of his father. And ſuch right of the Inheritance in the taile is not altogether expired by force of ſuch releaſe, &c. *Ergo*, it muſt needs be that ſuch right remain in abeiance, *ut ſupra*, during the life of Tenant in taile that releaſeth, &c. and after his deceaſe ſuch right preſently is in his iſſue in deed, &c.

Sect. 650.

ITem meſme le maner eſt, lou tenant en taile granta tout ſon eſtate a vn auter, ē ceſt cas le grauntee nad eſtate forſque pur terme de

IN the ſame manner it is where Tenant in taile grant all his eſtate to another; in this caſe the grantee hath no eſtate but for term of life of the Tenant

LIttleton having declared where a fee is in abeyance, and where a freehold and fee is in abeyance by Act in Law, and where a fee that is in abeyance may be charged, here he putteth two caſes where a right of an Eſtate Taile may be in abeyance by the act of the partie, which are ſo cleere and evident, as there needs no further proofe or argument, than Littleton hath juſtly and artificially made, albeit ſome obſervations of no weight have been made againſt it. If Tenant in taile of lands holden of the King be attainted of felonie, and the King after office ſeiſeth the ſame, the eſtate taile is in abeyance, there ſaid to be in ſuſpence. Pl. Com. fol. 562, 563. in Walſinghams caſe. 14 E. 3. Diſcont. 5. 19 H. 6. 60. 29. Aſſ. p. 1. Walſinghams caſe ubi ſupra.

Grant ſon eſtate, concedit ſtatum ſuum, State or eſtate ſignifieth ſuch Inheritance, Freehold terme for years, Tenancy by Statute Merchant, Staple, Elegit or the like, as any man hath in Lands or tenements, &c. And by the grant of his eſtate, &c. as much as he can grant ſhall paſs, as here by Littletons caſe appeareth. Tenant for life, the remainder in taile, the remainder to the right heirs of Tenant for life, Tenant for life grant coram ſtatum ſuum as a man and his heires, both eſtates do paſs. Vide Sect. 65. 524, 525, 526. 44 E. 3. 10. 14. Aſſ. 28. 43. Aſſ. 8. 5 H. 7. 30. 44 Aſſ. 28. 44 E. 3. 20.

Right, Jus, five rectum (which Littleton often uſeth) ſignifieth properly, and ſpecially in Writs and Pleadings, when an eſtate is turned to a right, as by Diſcontinuance, Diſſeiſin, &c. where it ſhall be ſaid, Quod jus deſcendit & non terra. But (right) doth alſo include the eſtate 20 H. 6. 9.

eſtate in eſſe in conveyances, and therefore if Tenant in fee ſimple make a Leaſe for years, and releaſe all his right in the land to the Leſſee and his heires, the whole eſtate in fee ſimple paſſeth.

Vid. Sect. 465. pl. Com. 484. Lib. 8. fol. 153. Althams caſe. 39 H. 6. 38.

And ſo commonly in fines, the right of the land includeth & paſſeth the eſtate of the Land, as A. cognovit tenementa prædicta eſſe jus ipſius B. &c. And the Statute (a) ſaith, Jus ſuum defendere, (which is) ſtatum ſuum. And note that there is Jus recuperandi, jus intrandi, jus habendi, jus retinendi, jus percipiendi, jus poſſidendi.

(a) W. 2. Cap. 3. Pl. Com. 484. & 487. b.

Title properly (as ſome ſay) is when a man hath a lawful cauſe of entry into Lands whereof another is ſeiſed, for the which he can have no Action, as title of condition, title of Mortmain, &c. But legally this word (Title) includeth a right alſo, as you ſhall perceive in many places in Littleton: and title is the more general word, for every right is a title, but every title is not ſuch a right for which an Action lyeth, and therefore Titulus eſt juſta cauſa poſſidendi quod noſtrum eſt, and ſignifieth the means whereby a man cometh to land, as his title is by fine or by feoffment, &c. And when the Plaintife in Aſſiſe maketh himſelf a title, the Tenant may ſay, Veniat Aſſiſa ſuper titulum, which is as much to ſay, as upon the title which the Plaintife hath made by that particular Conveyance, Et dicitur titulus a tuendo, because by it he holdeth and defendeth his Land, and as by a releaſe of a right a title is releaſed, ſo by releaſe of a title a right is releaſed alſo. See more hereof in Fitzherbert and Brookes Abridgements in the title of Title.

Vid. Sect. 425. 659, &c.

6 H. 7. 8. 2. Althams caſe ubi ſupra.

¶ *Intereſt.* Intereſſe is vulgarly taken for a term of chattls real, and more particularly for a future tearm, in which caſe it is ſaid in pleading, that he is poſſeſſed De intereſſe termini. But Ex vi termini in legal underſtanding it extendeth to Eſtates, Rights and Titles, that a man hath of, to, or out of Lands, for he is truly ſaid to have an intereſt in them: and by the grant of totum intereſſe ſuum in ſuch Lands, as well reverſions as poſſeſſions in fee ſimple ſhall paſs. And all theſe words ſingularly ſpoken are nomina collectiva, for by the grant of totum ſtatum ſuum in Lands all his Eſtates therein paſs. Et ſic de cæteris.

Pl. Com. fol. 374. in Seignior Zouches caſe, & fol. 487. & 498. in Nichols caſe.

23 H. 8. Taile Br. 32. 35 H. 8. Grant. Br. 150. Vid. 46 Eliz. Dier 325. b. Titulum.

¶ *Ne unques auera briefe de waſte, &c.* So it is if Tenant for life be, the remainder in taile, and he in the remainder releaſe to the Tenant for life, all his right and ſtate in the Land. Hereby it is ſaid in our Books, that the eſtate of the Leſſee is not inlarged, but the releaſe ſerveth to this purpoſe, to put the eſtate taile into abeyance, ſo as after that he in the remainder cannot have an Action of waſte; yet in that caſe (ſaving reformation) the Leſſee for life hath an eſtate for the life of Tenant in taile expectant upon his own life. But if Tenant in fee releaſe to his Tenant for life all his right, yet he ſhall have an Action of waſte. And if Tenant in taile make a Leaſe for his own life, he ſhall have an Action of Waſte.

43 Aſſ. p. 13. 41 E. 3. tit. Waſte 83. 11 H. 4. 97. 13 H. 7. 10. Pl. Com 482. Per Dier 27 H. 8. 20.

41 E. 3. 23.

F. N. B. 60 H. 41 E. 3. Waſte 83. 42 E. 3. 18.

vie del tenant en le taile et le reuerſion ô le taile neſt pas en le tenant en taile, pur ceo q̃ il auoit graunt tout ſon eſtate et ſon droit, &c. Et ſi le tenant a que le graunt fuit fait fuit waſt, le tenant en le taile ne vnqz auera briefe de Waſt, pur ceo que nul reuerſion eſt en luy. Mes le reuerſion et le enheritance de le taile, durant le vie le tenant en le taile, eſt enabeiance, ceſtaſcauoir, tantſolement en le remembrance, conſideration, et intelligence de la ley.

in taile, and the reverſion of the taile is not in the Tenant in taile, becauſe he hath granted all his eſtate and his right, &c. And if the Tenant to whom the grant was made make waſte, the Tenant in taile ſhall not have a Writ of waſte, for that no reverſion is in him: but the reverſion and inheritance of the taile during the life of the Tenant in taile is in abeiance, that is to ſay, only in the remembrance, conſideration, and intelligence of the Law.

Sect.

Sect. 651.

¶ Item, si vn Euesque alien terres que sont parcel de son Euesquery & deuie, ceo est vn discontinuance a son successor, pur ceo que il ne poit enter, mes est mis a son briefe De Ingressu sine assensu capitvli.

Also if a Bishop alien lands which are parcel of his Bishoprick and die, this is a discontinuance to his successor, because he cannot enter, but is put to his writ of *De Ingressu sine assensu capituli.*

Of this sufficient hath been said (how the Law standeth at this day) before in this Chapter.

Sect. 652.

¶ Item, si vn Dean alien terres queux il ad en droit de luy et son Chapiter, & mozust, son successor poit enter. Mes si le Deane est sole seisie come ē droit son Deanry, donque son alienation est discontinuance a son successor come est dit adeuant.

Also if a Dean alien lands which he hath in right of him and his Chapter and dieth, his successor may enter. But if the Dean be sole seised as in right of his Deanary, then his alienation is a discontinuance to his successor as is said before.

¶ Hereof also that which was necessary is before said in this Chapter, and Littletons own words are plain and evident.

32 E. 4. tit. Feoffment, & faits 29.
21 E. 4. 35, 36.

Sect. 653, 654, 655, & 656.

¶ Item, peraduenture ascuns voilont arguer et dire, que si vn Abbe et son couent sont seisies en lour demesne come de fee de certaine terres a eux et a lour successors, &c. et l'Abbe sans assent de son Couent alien mesmes les terres a vn auter et deuie, ceo est vn discontinuance a son successor, &c.

Also peradventure some will argue and say, that if an Abbot and his Covent be seised in their demesne as of fee of certain lands to them and to their successors, &c. and the Abbot without the assent of his Covent alien the same lands to another and die, this is a discontinuance to his successor, &c.

Sect. 654.

¶ Per mesm̄ le reason ils voilent dire, que lou vn Dean en Chapter sont seisies de certain terre a eux et a lour successors, si le Deane alien mesme la terre, &c. ceo

By the same reason they will say, that where a Dean and Chapter are seised of certain lands to them and their successors, if the Dean alien the same lands,

ceo ſerroit vn diſcontinuance a ſon ſucceſſor iſſint q̄ ſon ſucceſſor ne poit enter, &c. A ceo poit eſtre reſpondue que il y ad grand diuerſitie penter les deux caſes.

&c. this ſhall be a diſcontinuance to his ſucceſſor, ſo as his ſucceſſor cannot enter, &c. To this it may be anſwered, that there is a great diverſity between theſe two caſes.

Sect. 655.

CAr quant vn Abbe & l'Couent ſont ſeiſies, vncore ſils ſont diſſeiſie, Labbe auera aſſiſe en ſon noſm̄ demeſne, ſans noſmer le Couent, &c. Et ſi aſcun voile ſuer Præcipe quod reddat, &c. de meſmes les terres quant ils ſueront en le maine Labbe et Couent, il couient que tiel action real ſoit ſue enuers Labbe ſolement ſans noſme la Couent, pur ceo q̄ touts ſont moꝛts perſons en la ley, forſque Labbe que eſt le ſoueraigne, &c. Et ceo eſt per cauſe del ſoueraigntie; Car auterment il ſerroit forſque come vn de les auters Moignes de le Couent, &c.

FOr when an Abbot, and the Covent are ſeiſed, yet if they be diſſeiſed, the Abbot ſhall have an aſſiſe in his own name without naming the Covent, &c. And if any will ſue a *Præcipe quod reddat, &c.* of the ſame lands when they were in the hands of the Abbot and Covent, it behoveth that ſuch action real be ſued againſt the Abbot only without naming the Covent, becauſe they are all dead perſons in Law, but the Abbot who is the ſoveraign, &c. and this is by reaſon of the ſoveraignty; For otherwiſe he ſhould be but as one of the other Monks of the Covent, &c.

Sect. 656.

CMES vn Deane et le Chapter ne ſont moꝛt plons en la ley, &c. car cheſcun de eux poit auer action per ſoy ē diuers caſes. Et de tiels terres ou tenements q̄ le Deane et Chapter ont en common, &c. ſils ſoient diſſeiſies, le Deane et Chapter aueront vn aſſiſe, et nemy le Deane ſole, &c. Et ſi auter voile auer action real de tiels terres ou tenements enuers le Deane, &c. il couient de ſuer enuers le Deane et Chapter, et nemy enuers le Deane ſole, &c. et iſſint il appiert

BUt Dean and Chapter are not dead perſons in Law, &c. for every of them may have an action by himſelf in divers caſes. And of ſuch lands or tenements as the Dean and Chapter have in common, &c. if they be diſſeiſed, the Dean and Chapter ſhall have an aſſiſe, and not the Dean alone, &c. And if another will have an action real for ſuch lands or tenements againſt the Dean, &c. he muſt ſue againſt the Dean and Chapter, and not againſt the Dean alone, &c. and ſo there appeareth a

appiert grand diuerſitie perenter les deux caſes, &c.

great diverſity between the two caſes, &c.

THeſe are apparent and need no explanation: Having in the 655. Section mention is made of the Præcipe quod reddat, which in this place is intended of a real action whereby land is demanded, and is ſo called of the words in every ſuch writ.

And the reaſon of this diverſity between the caſe of the Abbot and Covent, and Dean and Chapter is, for that (as hath been ſaid) the Monkes are regular, and civilly dead, and the Chapter are ſecular, and perſons able and capable in Law. But by the policy of Law the Abbot himſelf (here termed the ſoveraign) albeit he be a Monk and regular, yet hath he capacity and ability to ſue and be ſued, to enfeoffe, give, demiſe and leaſe to others, and to purchaſe and take from others, for otherwiſe they which right have ſhould not have their lawful remedie, nor the houſe remedy againſt any other that did them wrong, neither could the houſe without ſuch capacity and ability ſtand. And the Covent have no other ability or capacity, but only to aſſent to eſtates made to the Abbot, and to eſtates made by him, which for neceſſities ſake, though they be civilly dead, they may do.

Vid. Sect. 200. 8 E. 3. 27. 11 H. 4. 84. 21 E. 4. 86. 11 H. 7. 12.

Sect. 657.

ITem, ſi le Maſter dun Hoſpital diſcontinue certaine terre de ſon Hoſpital, ſon ſucceſſor ne poit enter, mes eſt mis a ſon briefe de ingreſſu ſine aſſenſu confratrum & conſororum, &c. Et touts tiels briefes pleinment appearōt en le Regiſter, &c.

ALſo if the Maſter of an Hoſpital diſcontinue certain land of his Hoſpital, his ſucceſſor cannot enter, but is put to his writ of *De ingreſſu ſine aſſenſu confratrum & conſororum, &c.* And all ſuch writs fully appear in the Regiſter, &c.

THis muſt alſo be underſtood where the Maſter of the Hoſpital hath ſole and diſtinct poſſeſſions, and not where he and his brethren are ſeiſed as a body politick aggregate of many. And here Littleton (as divers times before) doth cite the Regiſter.

Sect. 658.

ITem, ſi terre ſoit leſſe a vn home pur terme de ſavie, le remainder a vn auter en le taile, ſauant le reuerſion al leſſor, et puis celuy en le remainder diſſeiſiſt le tenant a terme de vie, et fait vn feoffment a vn auter en fee, et puis morust ſans iſſue, et le tenant a terme de vie morust, il ſemble en ceſt cas, q̄ celuy en la reuerſion bien puit enter ſur le feoffee, pur ceo que celuy en le remainder que fiſt le feoffment, ne fuit vnque ſeiſie en le taile per force de meſme le remainder, &c.

ALſo if land be let to a man for term of his life, the remainder to another in taile ſaving the reverſion to the Leſſor, and after he in the remainder diſſeiſeth the Tenant for term of life, and maketh a feoffment to another in fee, and after dyeth without iſſue, and the Tenant for life dyeth. It ſeemeth in this caſe that he in the reverſion may well enter upon the feoffee, becauſe he in the remainder which made the feoffment was never ſeiſed in taile by force of the ſame remainder, &c.

Here

Vid. Sect 637 592 596. 597 601-640 641. Vide Sect. 637.

HEre it appeareth, That albeit the Feoffor hath an Estate Taile in him expectant upon an estate for life, yet his Feoffement worketh no Discontinuance. Wherein Littleton doth adde a limitation to that which in this Chapter he had generally said, viz. That an Estate Taile cannot be discontinued, but where he that maketh the Discontinuance was once seised by force of the Taile; which is to be understood when he is seised of the Freehold and Inheritance of the Estate in Taile, and not where he is seised of a Remainder or a Reversion expectant upon a Freehold: which Freehold (as often hath been said) is ever much respected in Law.

CHAP. 12. Of Remitter. *Sect.* 659

HEre our Author having next before treated of a Discontinuance, very aptly beginneth this Chapter with a description of a Remitter.

Remitter est vn antient terme en la Ley. and is derived of the Latine Verbe Remittere, which hath two significations, either, To restore and set up again, or to cease. Therefore a Remitter is an operation in Law upon the meeting of an ancient right remediable, and a latter state in one person where there is no laches in him, whereby the ancient right is restored and set up again, and the new defeasible estate ceased and vanished away. And the reason hereof is, for that the law preferreth a sure and constant right, though it be little, before a great Estate by wrong and defeasible, and therefore the first and more ancient is the most sure and more worthy title; Quod prius est, verius est, & quod prius est tempore, potius est jure: (a) Therefore many Books in stead of Remitter say, That he is En son primer estate, or en son melior droit, or en son melior Estate, or the like.

(a) 25. Ass. pl. 4. 35. Ass. pl. 11. 26 E. 3. 69. 11 H. 4. 50. 2. 41 E. 3. 17. b. Et tit. Remitter 11. 6 E. 3. 17.

Lou home ad deux Titles. Here this word (Titles) is taken in the largest sense, including rights for being properly taken, (b) as in case of a condition, mortmaine,

(b) V. Sect. 419. & 659, &c. 34 H. 8. tit. Remitter Br. 50 44 E. 3. Attaint. 22 38. Ass. 17.

REmitter ẽ vn antient terñ en la Ley, et est lou home ad deux titles a terres ou teñts, ſ. vn pluis antient title, et vn auter title pluis darrein, et ſil vient a la terre per le pluis darreine title, vncore la Ley luy adiudgera eins per force del pluis eigne title, pur ceo q̃ le pluis eigne title est le pluis ſure title, et pluis deigne title. Et donque quant home est adiudge eins per force ẽſon eigne titl', ceo est a luy dit vn remitter, pur ceo que la ley luy mitter deſire eins en la terre per le pluis eigne et ſure title. Sicome tenant en le taile diſcontinua la taile, et puis il diſſeiſiſt ſ diſcontinuee, et iſſint morust ſeiſie, per que les tenemẽts diſcendont a ſon iſſue ou coſine, inheritable per

REmitter is an antient terme in the Law, and is where a man hath two titles to Lands or Tenements, *viz.* one a more antient title, and another a more latter title, and if he come to the land by a latter Title, yet the Law will adjudge him in by force of the elder title, because the elder title is the more ſure and more worthy Title. And then when a man is adjudged in by force of his elder title, this is ſaid a Remitter in him for that the Law doth admit him to be in the Land by the elder and ſurer Title. As if Tenaunt in Taile diſcontinue the Taile, and after he diſſeiſeth his Diſcontinuee and ſo dieth ſeiſed, whereby the Tenements deſcend to his Iſſue or coſine inheritable by

per force de le Taile: en ceſt caſe, ceo eſt a luy a que les Tenements diſcendont q̄ ad droit per force de le Taile vn remitter a le Taile, pur ceo q̄ le Ley luy mitte et adiudge deſtē eins p force de l' taile que eſt ſon eigne title, car ſil ſerroit eins per force de le diſcent, donques le Diſcontinuee puiſſoit auer Briefe de Entre ſur diſſeiſin en l' Per enuers luy, et recouer les tenemēts et ſes dammages, &c. Mes entant que il eſt eins en ſon remitter per force de le Taile, le title et le intereſt le diſcontinuee, eſt tout oulterment anient et defeat, &c.

force of the Taile: In this caſe this is to him to whom the Tenements deſcend, who hath right by force of the Taile; a Remitter to the Taile, becauſe the Law ſhall put and adjudge him to be in by force of the Taile, which is his elder Title; for if he ſhould be in by force of the diſcent, then the Diſcontinuee might have a Writ of Entrie *Sur Diſſeiſin* in the *Per* againſt him, and ſhould recover the Tenemēts and his dammages, &c. but inaſmuch as he is in his remitter by force of the taile, the title & intereſt of the Diſcontinuee is quite taken away and defeated, &c.

aſſent to a Baviſher, and the like, there is no Remitter wrought unto them, becauſe theſe are but bare titles of Entrie, for the which no Action is given, but a Remitter muſt be to a precedent right: And Lit. in this Chapter putteth all his caſes only of Remitrery, to Rights remediable.

¶ *Et vn auter Title pluis darreine, &c.* Here is to be obſerved, That an Eſtate muſt work a Remitter to an ancient right, for albeit two rights do deſcend, there can be no Remitter, becauſe one right cannot work a Remitter to another: for regularly to every remitter there be two incidents, viz. an ancient right and a deſcendible eſtate of Freehold coming together. 19 H.6.59.78.45. tit. Entre Cong.3.Pl.Com. 246.a.

¶ *Le pluis eigne Title eſt le pluis ſure Title, & pluis digne Title.* So as the eldeſt title is worthily (as hath been ſaid) preferred, becauſe it is the more ſure and more worthy.

¶ *Sicome Tenant en Taile diſcontinue le Taile, &c.* Here our Author according to his accuſtomed manner, to illuſtrate his deſcription putteth an example of a Remitter, where the Law preferreth the ancient eſtate by right, before a new Eſtate defeaſible. And this Remitter is wrought by an Eſtate caſt upon the Iſſue in Taile by diſcent, which is an Act in Law, and the diſcent of the land in poſſeſſion, and the right of Eſtate Taile deſcend together. 19 H.6.61,62.

¶ *Eſt tout oulterment anient & defeat, &c.* Here be two things implied and to be underſtood: Firſt, That this Remitter is wrought in this caſe by operation of Law upon the Freehold in Law deſcended without any entry. Secondly, That the Law ſo favoureth a Remitter, (being a reſtoring to right) that if the Diſcontinuee be an Infant or a Feme Covert, and Tenant in taile after a Diſcontinuance diſſeiſe them and die ſeiſed, the Iſſue ſhall be remitted without any reſpect of the privilege of Infancy or Coverture, and therefore our Author ſaid, Le title & intereſt le Diſcontinuee eſt tout oulterment anient & defeat. 11 E.4.1.

¶ *Donques le Diſcontinuee, &c.* Here is a reaſon added in this particular Taile, that ſitteth not other caſes of Remitter; for in this caſe and many other, the Law that abhorreth Suits of vexation, doth avoid circuit of Action, for the Rule is, Circuitus eſt evitandus. 11 E.3.3.tit. Aſſ.85. 4 E.4.35. 12.R.2.Bar.242.30 E.3.26 E.3.7.19 H.6.63 24 E.3.70.14 H.4.27.10 H.7.11. F.N.B. Meine & Waſt.

Sect. 660.

¶ Item, ſi l' tenāt en Tayle enfeoffa ſon fits

A Lſo if Tenant in Tayle infeoffee his Sonne in Fee,

¶ Our Author having put one example where both the Rights deſcend together; now Temps E.1.Remit.13. 11 E.3.Age 5. 38 E.3.24. 40 E.3.43. 21 E.4.19.

now puts another example where the Iſſue in Taile claimeth by purchaſe in the life of Tenant in Taile, and the antient right deſcendeth after to the ſame Iſſue.

¶ *Car coment que tiel Heire fuit de pleine age al temps delmort, &c.* The reaſon is, Becauſe no folly can be adiudged in the Infant at the time of the acceptance of the Feoffement. Therefore the Law reſpecteth the time of the Feoffment, and not the time of the death: and albeit he might have waived the eſtate which he had by the Feoffement at his full age, yet here it appeareth that the right of the Eſtate Taile deſcending to him either within age, or of full age, ſhall work a Remitter in him, for that the wrong of the ſtate ſhould have bin to his loſs and prejudice.

27 H.8.c.10. of Uſes. 35 H.8.Dy.54.b.& E.6. ib.77.a.& 2.P. & M. 116.2.& 2.P.& M. 129. 191.28 H.8.23.b. Pl. Com. Amy Townſhends caſe fol. 34 H.8.tit.Remit.Br.49.

Since Littleton wrote, and after the Statute of 27. H. 8. cap. 10. if Tenant in Taile make a Feoffement in Fee to the uſe of his Iſſue being within age, and his Heires, and dieth, and the right of the Eſtate Taile deſcend to the Iſſue being within age, yet he is not remitted, becauſe the Statute executeth the poſſeſſion in ſuch plaine manner and forme as the uſe was limited: Et ſic de ſimilibus, ſo as there is a great change of Remitters ſince Littleton wrote.

Pl. Com. ub. ſup.

But if the Iſſue in Taile in that caſe waive the Poſſeſſion, and bring a Formedon in the Diſcender, and recover againſt the Feoffee, he ſhall thereby be remitted to the Eſtate Taile, otherwiſe the Lands may be ſo incumbred, as the Iſſue in Taile ſhould be at a great inconvenience: but if no formedon be brought, if that Iſſue dieth, his Iſſue ſhall be remitted, becauſe a ſtate in fee ſimple at the Common Law deſcendeth unto him.

¶ *Eſteant de pleine age il charge per ſon fait,*

en fee, ou ſon Coſine inheritable per force de le taile, le quel fits ou coſin al temps de feoffment eſt deins age, et puis le tenant en le taile deuia, et celuy a que le feoffmēt fuit fait eſt ſon heyre per force de le Taile, ceo eſt vn remitter al heire en le taile a que le feoffment fuit fait. Car coment que durant la vie le Tenant en le taile que fiſt le Feoffment, tiel heire ſerra adiudge eins p force de le feoffment, vncore apres la mort le tenant en le tayle, lheire ſerra adiudge eins per force de le taile, et nemy p force de le feoffment. Car coment que tiel heire fuit de pleine age al temps de le mort de le Tenaunt en le Taile que fiſt le Feoffment, ceo ne fait aſcun matter, ſi lhe fuit deins age al tẽps del feoffmẽt fait a luy. Et ſi tiel heire eſteant deins age al temps de tiel Feoffement, vient al pleine age viuant le Tenant en le taile, que fiſt le Feoffment, et iſſint eſteant de pleine age, il charge per ſon fait meſme la Terre ou vn

or his Coſine inheritable by force of the Taile, which Sonne or Coſine at the time of the Feoffment is within age, and after the Tenant in Tail dieth, and he to whom the Feoffement was made is his heire by force of the Taile, this is a Remitter to the heire in taile to whom the Feoffement was made: for albeit that during the life of the Tenant in Tayle who made the Feoffement, ſuch heire ſhall be adjudged in by force of the Feoffement, yet after the death of Tenant in taile, the heir ſhall be adjudged in by force of the Taile, and not by force of the feoffment. For although ſuch heir were of full age at the time of the death of the Tenant in Taile who made the Feoffment, this makes no matter, if the heire were within age at the time of the feoffement made unto him. And if ſuch heir being within age at the time of ſuch feoffmēt, commeth to full age, living the tenant in taile that made the feoffement, and ſo being of full age he charges by his deed

vn common de paſture, ou oue vn rent charge, & puis le tenant en le taile morust, ore il ſemble que le terre eſt diſcharge del common, et de le rent, pur ceo que le heire eſt eins de auter eſtate en la terre, que il fuit al temps de le charge fait, entant que il eſt en ſon remitter per force de le tayle, & iſſint le eſtate, que il auoit al temps de le charge, eſt ouſterment defeat, &c.

the ſame Land with a common paſture or with a rent charge, and after the Tenant in taile dieth, now it ſeemeth that the Land is diſcharged of the Cõmon. and of the rent, for that the heire is in of another Eſtate in the Land then he was at the time of the charge made, in as much as he is in his Remitter by force of the tayle, and ſo the eſtate which he had at the time of the charge is utterly defeated, &c.

&c. The reaſon is becauſe the Grantor had not any right of the eſtate in taile in him at the time of the grant, but only the eſtate in fee ſimple gained by the feoffment, which (as Littleton here ſaith) is wholly defeated. And the ſtate of the land out of which the rent iſſued, being defeated, the rent is defeated alſo.

But if Tenant in taile 21 H.2.21. Edriches caſe.
made a Leaſe for life whereby he gaineth a new reuerſion in fee, ſo long as Tenant for life liueth, and he granteth a rent charge out of the Reuerſion, and after Tenant for life dieth, whereby the Grantor becommeth Tenant in taile again, and the Reuerſion in fee defeated, yet becauſe the Grantor had a right of the entaile in him, cloathed with a defeaſible fee ſimple, the rent charge remaineth good againſt him, but not againſt his iſſue, which diuerſity is

worthy of obſeruation, for it openeth the reaſon of many Caſes.

If the heir apparant of the Diſſeiſee diſſeiſe the Diſſeiſor, and grant a rent charge, and then the Diſſeiſee dieth, the Grantor ſhall hold it diſcharged, for there a new right of entry doth deſcend unto him, and therefore he is remitted.

So if the Father diſſeiſe the Grandfather, and granteth a Rent charge, and dieth, now is the entry of the Grandfather taken away, if after the Grandfather dieth, the Sonne is remitted, and he ſhall auoid the charge. So as where our Author putteth his example of a fee taile, it holdeth alſo in caſe of a fee ſimple.

¶ *Vn common de paſture, ou vn rent charge, &c.* Here Littleton putteth his caſe of things granted out of the Land. But what if the iſſue at full age by Deed indented, or Deed poll made a Leaſe for years of the Land, and after by the death of Tenant in taile he is remitted, whether ſhall he auoid the Leaſe or no. And it is holden he ſhall not, becauſe it is made of the Land it ſelf, and the Land is become by the Leaſe in another plight, then it is in the caſe of a grant of a Rent charge, which I gather out of our Authors own words in another place. 33 H.8.Dier 51. b. Vide Sect.289.

¶ *La terre eſt diſcharge del rent, &c.* Littleton doth adde theſe words materially, becauſe the whole grant is not thereby auoided, but the Land diſcharged of the Rent charge, for the Grantee ſhall haue notwithſtanding a Writ of Annuity, and charge the perſon of the Grantor. Li.2.f.36.b.Wards caſe.

Sect. 661.

¶ Item, vn principall cauſe pur que tiel heire en les caſes auantdits, & auters caſes ſemblables ſerra dit en ſon remitter, eſt pur ceo que il ny ad aſcun perſon enuers que il poit ſuer ſon briefe de

ALſo a principal cauſe why ſuch heire in the Caſes aforeſaid, and other like caſes ſhall be ſaid in his Remitter, is for that there is not any perſon againſt whom he may ſue his writ of *Formedon.* For againſt

¶ *Vn principall cauſe pur que, &c.* And of this opinion is (d) Littleton in our Books. (d) 12 E.4.20.

¶ *Il nad aſcun perſon enuers que, &c. ſicome il auoit loialment recouer meſme la terre vers vn auter, &c.* Here it is to be underſtood, that regularly a man ſhall not be remitted to a 14 E.3.18. 11 H.4.90.

right

right remedileſs, for the which he can have no action, for Littleton here ſaith, that there is no perſon againſt whom the iſſue when he commeth to the land without folly may bring his Action, and ſaith alſo, that this is the principal cauſe of the Remitter, for neither an Action without a right, nor a right without an Action can make a Remitter. As if Tenant in taile ſuffer a common recovery in which there is error, and after Tenant in taile diſſeiſeth the recoveror and dieth, here the iſſue in taile hath an Action, viz. a Writ of Error, but as long as the recovery remaineth in force, he hath no right, and therefore in that caſe there is no Remitter.

Lib. 3 f. 3. the Marqueſs of Winchelſters caſe.

Formedon. Car enuers luy meſme, il ne poit ſuer, & il ne poit ſuer enuers nul auter, car nul auter eſt tenant del franktenement, et pur cel cauſe la ley luy adiudge eins en ſon remitter, ſ. ē tiel plite, ſicome il auoit loialment recouer meſme la terre enuers vn auter, &c.

himſelf he cānot ſue, and he cannot ſue againſt any other, for none other is Tenant of the freehold, and for this cauſe the Law doth adjudge him in his Remitter, s. in ſuch plite, as if he had lawfully recovered the ſame Land againſt another, &c.

If B. purchaſe an Advowſon, and ſuffereth an uſurpation and ſix moneths to paſs, and after the uſurper granteth the Advowſon to B. and his heires, B. dieth, his heire is not remitted becauſe his right to the Advowſon was remedileſs, viz. a right without an Action.

5 H. 7. 35.

Tenant in taile of a Mannor whereunto an Advowſon is appendant maketh a Diſcontinuance, the Diſcontinuee granteth the Advowſon to Tenant in taile and his heires, Tenant in taile dieth, the Iſſue is not remitted to the Advowſon, becauſe the Iſſue had no Action to recover the Advowſon before he recovered the Mannor whereunto the Advowſon was appendant. And ſo it is of all other Inheritances regardant, appendant or appurtenant, a man ſhall never be remitted to any of them before he recontinueth the Mannor, &c. whereunto they are regardant, appendant, or belonging.

Britton fol. 126.

Car nul ne poet claimer droit en les appurtenances ne en les acceſſories que nul droit ad en le principall.

(c) Bract. li. 4. fol. 243. b.

(c) Item, excipi poteſt, &c. quamvis jus habeat in tenemento & pertinentiis, primo recuperare debet tenementum ad quod pertinet advocatio, & tunc poſtea præſentet & non ante, & de hac materia in Rottulo de Termino Sancti Michaelis, anno Regis Henrici tertio in comitatu Norff. de Thoma Basdolfe.

8 R. 2. Quare Imp. 199. 2. H. 4 18. 14 H. 6. 15, 16. 8 H. 6. 17. 33 H. 6. 15. F. N. B. 35. B. & 36. F. 24 E. 3. Diſcont. 16. 33 H. 8. Dier. 48. b.

But on the other ſide, if a man be remitted to the principal, he ſhall alſo be remitted to the appendant or acceſſory, albeit it were ſevered by the Diſcontinuee or other wrong doer. And therefore if Tenant in taile be of a Mannor, whereunto an Advowſon is appendant, and infeoffeth A. of the Mannor with the appurtenances, A. re-infeoffeth the Tenant in taile ſaving to himſelf the Advowſon, Tenant in taile dieth, his iſſue being remitted to the Mannor, is conſequently remitted to the Advowſon, although at that time it was ſevered from the Mannor. So it is in the ſame caſe if Tenant in taile had been diſſeiſed, and the Diſſeiſor ſuffer an uſurpation, if the Diſſeiſee enter into the Mannor, he is alſo remitted to the Advowſon.

Sect. 662.

ITem, ſi terre ſoit taile a vn home & a la feme, et a les heires de lour deux corps engendres, les queux ont iſſue file, et le feme deux, et le baront prent auter feme, et ad iſſue vn auter file, & diſcontinua le taile, & puis diſſeiſie le diſcontinuee et iſſint morust ſeiſie, ore le terre diſcendera

ALſo if Land be entailed to a man and to his wife, and to the heirs of their two bodies begotten, who have iſſue a daughter, and the wife dieth, and the husband taketh another wife, and hath iſſue another daughter, and diſcontinue the taile, and after he diſſeiſeth the Diſcontinuee and

dera a les deux files. Et en ceſt caſe quant al eigne file, que eſt inheritable per force de le tayle, ceo neſt vn remitter forſque de le moity. Et quant al auter moity el eſt mis a ſuer ſon action de Formedon enuers ſa ſoer. Car en ceſt cas les deux ſoers ne ſont pas tenants en parcenary, mes ſont tenants en common, pur ceo que ils ſont eins per diuers titles. Car lun ſoer eſt eins en ſon remitter per force de le taile quãt a ceo que a luy affiert, et lauter ſoer eſt eins quant a ceo que a luy affiert en fée ſimple per l'diſcent ſon pier, &c.

ſo die ſeiſed, now the Land ſhal deſcend to the two Daughters. And in this caſe as to the eldeſt daughter, who is inheritable by force of the taile, this is no remitter, but of the moity. And as to the other moitie ſhe is put to ſue her action of *Formedon* againſt her ſiſter. For in this caſe the two ſiſters are not tenants in parcenary, but they are Tenants in common, for that they are in by divers titles. For the one ſiſter is in in her remitter by force of the entaile, as to that which to her belongeth, and the other ſiſter is in as to that to her belongeth in fee ſimple by the diſcent of her father, &c.

¶ *Ceo neſt remitter forſque pur le moitie, &c.* Here Littleton putteth a caſe where the iſſue in taile ſhall be remitted to a moitie, becauſe but a moity of the Land deſcended unto her, and there cannot be any remitter, but for ſo much as commeth to the iſſue by diſcent, or by any other means without his folly, and in this caſe by act in Law the Coparcenary is defeated, for the daughters are in by ſeveral Titles, viz. the eldeſt daughter is Tenant in taile per formam doni, by the remitter of the one moity, and the youngeſt ſeiſed in fee ſimple by diſcent of the other moity, againſt whom the other ſiſter in taile may have her Formedon. 44 E.3.16. 19 H.6.59.

Sect. 663.

¶ En Meſme le manner eſt, ſi tenant en tayle enfeoffa ſon heire apparant en le taile eſteant lheire deins age, et vn auter ioint-tenant en fée, et le tenant en taile mozuſt, ore l'heire en tayle eſt en ſon remitter quant a lun moity, et quant a lauter moitie il eſt mis a ſon briefe de Formedon, &c.

IN the ſame manner it is if Tenant in taile enfeoffe his heire apparant in taile, (the Heire being within age) and another joint-tenant in fee, and the Tenant in taile dieth, now the heire entaile is in his Remitter as to the one moity, and as to the other moity, he is put to his Writ of *Formedon*, &c.

¶ *Lheire, &c. eſt en ſon remitter quant a lun moitie, &c.* Hereby it appeareth, that albeit joyntenants be ſeiſed pro indiviſo per my & per tout; yet each of them hath in judgement of Law but a right to a moity, and therefore the iſſue in taile in this caſe is remitted but to a moity. & is tenant in Common but with the other Feoffée. And ſo it is if the Diſcontinues after the death of Tenant in taile make a Charter of feoffment to the iſſue in taile being within age who hath right, & to a ſtranger in fee, and make livery to the Infant in name of both: the iſſue is not remitted to the whole, but to the half, for firſt he taketh the fee ſimple, and after the Remitter is wrought by operation of Law, and therefore can remit him but to a moity. But of this ſufficient hath been ſaid in the Chapter of Joyntenants. Vide Sect. 288.

Sect. 664.

¶ Item ſi teñ en taile enfeoffa ſon heire apparant, lheire eſteant de pleine age al temps de feoffment, et puis le teñ en taile mozuſt, ceo neſt remitter al heir̃, pur ceo que il fuit ſa folly, que il eſteant de pleine age voile pzen-dze tiel feoffment, &c. Mes tiel folly ne poit eſtre adiudge en lheire eſteãt deins age al temps del feoffment, &c.

ALſo if Tenant in taile enfeoffe his heire apparant, the heire being of full age at the time of the feoffment, and after Tenant in taile dieth, this is no remitter to the heire, becauſe it was his folly, that being of full age he would take ſuch feoffment, &c. but ſuch folly cannot be adjudged in the heire being within age at the time of the feoffment, &c.

40 l. 3. 44. 18 l. 4. 25.

¶ By this feoffment albeit the heire apparent hath ſome benefit in the life of his Anceſtor, yet is he thereby (beſides his own) ſubject during his life to all charges and incumbrances made or ſuffered by his Anceſtor. And therefore our Author ſaith well, Que il fuit ſa folly que il eſteant de pleine age voile prender tiel feoffment, but folly ſhall not be judged in one within age in reſpect of his tender years, and want of experience.

Sect. 665.

¶ HEre Littleton putteth a caſe where the huſband within age by the intermarriage may be remitted, albeit he gaineth but a freehold during the Coverture en auter droit.

Alſo here is to be obſerved that the eſtate which doth in this caſe worke, the Remitter could not have continuance after the deceaſe of the wife. And ſo on the other ſide, if the husband make a Diſcontinuance, and take back an eſtate to him and his wife, during the life of the husband, this is a Remitter to the wife preſently, albeit the eſtate is not by the limitation to have continuance after the deceaſe of the husband, which caſe is proved by the reaſon of the caſe which our Author here putteth. And here our Author obſerveth the diverſity when the husband is within age, and when he is of full age, for when he is within age, no folly can be adjudged in him, as in this Chapter hath been often ſaid.

¶ Item ſi tenant ẽ taile enfeoffa vn feme en fee, et mozuſt et ſon iſſue deins age pzent meſme la feme a feme, ceo eſt vn remitt al enfant deins age, et la feme donqz nad rien, pur ceo que le baron et ſa feme ſont forſque come vn perſon en ley. Et en ceſt cas le baron ne poit ſuer vn briefe de Formedon, ſinon que il voiloit ſuer enuers luy meſm̃, le quel ſerroit enconuenient, et pur cel cauſe la ley adiudgera lheire en ſon remitter, pur ceo que nul folly poit eſtr̃ adiudge en luy, eſteãt deins

ALſo if tenant in taile enfeoffe a woman in fee, and dyeth, and his iſſue within age taketh the ſame woman to wife, this is a Remitter to the infant within age, and the wife then hath nothing, for that the husband and his wife are but as one perſon in Law. And in this caſe the husband cãnot ſue a writ of *Formedon*, unleſs he will ſue againſt himſelf, which ſhould be inconvenient, and for this cauſe the Law adjudgeth the heire in his Remitter, for that no folly can be adjudged in him being

deins age al temps desponsals, &c. Et si heire soit en son remitter per force de le taile, il ensuist per reason, q̄ la feme nad riens, &c. Car entant que le baron & sa feme sont come vn person, la terre ne poit estre seuere per moities, & pur cel cause le baron est en son remitter de lentiertie: Mes autrement est si tiel heir fuit de pleine age al temps de les espousels, car donques le heire nad reins forsque en droit sa feme, &c.

within age at the time of the Espousels, &c. And if the Heire be in his remitter by force of the entaile, it followeth by reason that the wife hath nothing, &c. for inasmuch as the Husband and Wife be as one person the land cannot be parted by moities, and for this cause the Husband is in his remitter of the whole. But otherwise it is if such Heire were of full age at the time of espousels, for then the Heire hath nothing but in right of his Wife, &c.

Here is also to be noted that presently by the marriage within age, the Husband is remitted, and the Freehold and Inheritance of the wife vanished clean away.

¶ *Prist mesme la feme al fem.* Here it is good to be seen what things are given to the Husband by marriage: First, it appeareth here by Littleton, that if a man taketh to wife a woman seised in fee (f) he gaineth by the intermarriage an estate of Freehold in her right, which estate is sufficient to worke a Remitter, & yet the estate which the Husband gaineth dependeth upon uncertainty, and consisteth in privity, (g) for if the wife be attainted of felony, the Lord by Escheat shall enter and put out the Husband, otherwise it is if the felonie be committed after issue had. Also if the Husband be attainted of felony, the King gaineth no Freehold but a pernancie

(f) 13 H.4.6. Stanf.l.3.b. 18 E.4.5. 11 H.7.19. 10 H.6.11. 7 H.6.9.b.

Vide Sect. 58.

(g) 4. Ass. P.4. 4 E.3. Ass. 166.

of the profits during the Coverture and the Freehold remaineth in the wife. (h) Secondly, if she were possessed of a terme for years, yet he is possessed in her right, but he hath power to dispose thereof by Grant or Demise, and if he be outlawed or attainted, they are gifts in Law.

(*) Upon an Execution against the Husband for his debt, the Sheriffe may sell the term during her life: but the Husband can make no disposition thereof by his last will. Also if he make no disposition or forfeiture of it in his life, yet it is a gift in Law unto him if he do survive his wife, but if he make no disposition and die before his wife, he shall have it again. And the same Law is of estates by Statute Merchant, Statute Staple, Elegit, Wardships and other Chattels reals in possession.

(h) Pl.Com.fol.260.b. Dame Hales Case. 50 Ass.5. 38 H.6.23. 21 E.4.35.7 E.4.6. 7 H.7.2. 10 H.6.11.

(*) Mich. 26. & 27. Eliz. inter Amnor and Lodington in Briefe de error ad judge in both Courts, lib. 8. fol. 96. Mat. Manning. case.]

But if the Husband charge the Chattel real of his wife, it shall not bind the wife if she survive him.

7 H.6.fol.2.

If a Feme sole be possessed of a Chattel real, and be thereof dispossessed, and then taketh Husband and the wife dieth, and the Husband survive, this right is not given to the Husband by the intermarriage, but the Executors or Administrators of the wife shall have it, so it is if the wife hath but a possibility.

Vide Sect. 58.

In the same manner it is if the wife be possessed of Chattels reals in auter droit, as Executrix or Administratrix, or as Gardeine in Socage, &c. and she intermarrieth, the Law maketh no gift of them to the Husband, although he survive her. In the same manner if a woman grant a term to her own use, taketh Husband, and dieth, the Husband surviving shall not have this trust, but the Executors or Administrators of the wife (i) for it consisteth in privity, and so hath it been resolved by the Justices. Chattels reals consisting merely in Action the Husband shall not have by the intermarriage, unless he recovereth them in the life of the wife, albeit he survive the Wife, as a Writ of Right of ward, a valore maritagii, a forfeiture of marriage, and the like, whereunto the Wife was intitled before the marriage.

Pl.Com.fol.294. Osbornes case and there fol. 192.b. Wrotesleys case.

(i) Pasch. 32. Eliz. in Cancellar. in Withams case. Hill. 38. Eliz. in Cancell. in Waterhouses case. Wrotesleys case, ubi sup.

But Chattels reals being of a mixt nature, viz. partly in possession, and partly in Action, which happen during the Coverture, the Husband shall have by the intermarriage, if he survive his wife, albeit he reduceth them not into possession in her life time: but if the wife survive him, she shall have them. As if the Husband be seised of a Rent service, Charge, or Seck, in the right of his wife, the rent become due during the Coverture, the wife dieth, the Husband shall have the arrerages, but if the wife survive the Husband, she shall have them, and not the Executors of the Husband. So it is of an Advowson, if the Church become void during the Coverture, (k) he may have a Quare impedit in his own name, as some hold: but the wife shall have it if she survive him, and the Husband if he survive her, Et sic de similibus.

13 E.3. Quare Imp. 57. 14 H.4.12.38 E.3.35.b. 50 E.3.12. 16 H.6. 11. F.N.B. 121. 22 H.6.25. 29 E.3.40. 11 R.2. Account 49. 12 R.2. Briefe 639. 5 E.3. Execut. 99.

(k) 16 E.3.13.28.H.6.9. 7 H.7.2.

But

But if the arrerages had become due, or the Church had fallen void before the marriage, there they were meerly in Action before the marriage, and therefore the Husband should not have them by the Common Law, although he survived her. And so it is of Reliefes, Mutatis mutandis: (l) But now by the Statute of 32. H. 8. cap. 37. if the Husband survive the wife, he shall have the arrerages as well incurred before the marriage, as after.

But the marriage is an absolute gift of all Chattels personals in possession in her own right, whether the Husband survive the Wife or no; but if they be in Action, as debts by Obligation, Contract, or otherwise, the Husband shall not have them unless he and his Wife recover them. And of personal Goods en auter droit, as Executrix or Administratrix, &c. the marriage is no gift of them to the Husband, although he survive his wife.

(m) If an Estray happen within the Mannor of the wife, if the Husband die before seisure, the wife shall have it, for that the property was not in the wife before seisure.

But as to personal Goods there is a diversity worthy of observation, between a property in personal goods, (as is aforesaid) and a bare possession, for if personal goods be bailed to a Feme, or if she find goods, or if goods come to her hands as Executrix to a Bailiffe, and taken a Husband, this bare possession is not given to the Husband, but the Action of Detinue must be brought against the Husband and wife.

But now let us hear Littleton.

¶ *Le quel ſerra inconvenient.* This argument ab inconvenienti, our Author hath used in many places.

26 E. 3. 64. 10 H. 6. 11. F. N. B. 121. 12 H. 6. 25. (l) Lib. 4. fol. 51. in Ognels case. Hil. 17. El. Rot. 457. in Com. Banco, Sharps case. 21. E. 4. 4. 21 H. 7. 29. 21 H. 7. 4. 36 H. 8. 7. 42 E. 3. 10. 3 H. 6. 23. 37. 4 H. 6. 5. 14 E. 2. Dec. 173. 5 E. 2. ibid. 169. 30 E. 3. 48 E. 3. 12. 12. R. 3. Brc. 638, 639. 16 E. 4. 8. 16 H. 6. Brc. 939. (m) 43 E. 3. 8. V. 10 H. 6. 11. 39 E. 3. 17.

Vide Sect. 87. &c.

Sect. 666.

ITem, ſi Feme ſeiſie de certaine terre en fee prent baron, le quel aliena meſme la terre a un auter en Fee, laſſe-tee lella meſme la terre al Baron & la Feme pur terme de lour deux vies, ſauant le reuerſion al Leſſor & a ſes heires, en ceſt cas la Feme eſt eins en ſon Remitter, & el eſt ſeiſie en Fait en ſon demeſne come de Fee, ſicome el fuit deuant pur ceo que le repriſel del Eſtate ſerra adiudge en Ley le Fait le Baron, & nemy le fait la Feme, iſſint nul folly pott eſtre adiudge en la Feme, que eſt couert en tiel Caſe, & en ceſt caſe le Leſſor nad rien en le Reuerſion, pur ceo que la Feme eſt ſeiſie en Fee, &c.

ALſo if a woman ſeiſed of certain Land in Fee, taketh Husband, who alieneth the ſame Land to another in Fee, the Alienee letteth the ſame Land to the Husband and Wife for term of their two lives, ſaving the reverſion to the Leſſor and to his Heires: In this caſe the Wife is in in her Remitter, and ſhe is ſeiſed in Deed in her Demeſne as of Fee, as ſhe was before, becauſe the taking back of the Eſtate ſhall be adjudged in Law the fact of the Husband, and not the fact of the Wife; ſo no folly can be adjudged in the Wife, which is Covert in ſuch Caſe. And in this Caſe the Leſſor hath nothing in the Reverſion, for that the Wife is ſeiſed in fee, &c.

¶ *La Feme eſt en ſon Remitter.* By this it appeareth, That albeit there be no molition betweene Husband and wife, yet this is a Remitter preſently, and ſtandeth not upon the Surbidor of the Wife, as ſome have thought, for if the Eſtate gained by intermarriage be ſufficient Eſtate to worke a Remitter, a fortiori, an Eſtate made to the Husband and Wife ſhall worke a Remitter in the wife. And ſo it is if Tenant in Taile infeoffe his Iſſue being within age, and his wife in Fee, and dieth, this is a Remitter to the Iſſue preſently, by the death of Tenant in Taile, though ſome have thought the contrary.

21 E. 3. 26. 29 E. 3. 43. 41 E. 3. Remit. 11. 18 E. 3. Remit. 14. 35. Aſſ. 12. 38 E. 3. 24. 39 E. 3. 29. 30. 41 E. 3. 17. 46 E. 3. 20. B. 26 E. 3. 89. VI. Sect. 676. a R. 2. Remit. 12. 44. E. 3. 27.

Here

Here alſo it appeareth, That no folly in this caſe can be adjudged in a Feme Covert, for the taking back of the Eſtate ſhall be adjudged in Law the act of the Husband.

The Marqueſs of Winch. caſe, ub. ſup.

Note in the caſe of the Feme Covert, ſhe may be remitted in the life of the Diſcontinnor, becauſe ſhe hath a preſent right: but in the caſe of Tenant in taile, the Iſſue cannot be remitted in the life of the Diſcontinnor, becauſe the Iſſue hath no right until his deceaſe.

Sect. 667.

¶ Mes en ceſt caſe ſi le Leſſour voile ſuer Action de Waſt vers le Baron et ſa Feme, pur ceo que le Baron auoit fait Waſt, le Baron ne poit barrer le Leſſor pur monſtre ceo, que le repriſel ol eſtat fait a luy et a ſon Feme, fuit vn Remitter a ſa feme, pur ceo que le Baron eſt eſtoppe adire ceo que eſt encounter ſ feoffment, et ſon repriſel demeſne del eſtate p̄ terme de vie a luy et a ſa Feme. Et vncore le Leſſor nad vn Reverſion, pur ceo que le Fee ſimple eſt en la feme. Et iſſint home poit veier vn matter en ceo caſe, q̄ home ſerra eſtoppe per vn matter en fait, coment que nul Eſcripture ſoit fait per fait indent ou auterment.

But in this Caſe if the Leſſor will ſue an Action of Waſt againſt the husband and his Wife, for that the husband hath cõmitted Waſt, the husband cannot barre the Leſſor by ſhewing this, that the taking back of the Eſtate to him and to his wife, was a Remitter to his wife, becauſe the husband is ſtopped to ſay that which is againſt his own Feoffement, and taking back of the Eſtate for term of life to him and to his Wife. And yet the Leſſor hath no reverſion, for that the Fee ſimple is in the Wife. And ſo a man may ſee one thing in this caſe, That a man ſhall be ſtopped by matter in Fact, though there be no Writing by Deed indented, or otherwiſe.

¶ *Pvr ceo que Baron eſt eſtoppe adire, &c.*

¶ *Eſtoppe* commeth of the French word Eſtoupe, from whence the Engliſh word Stopped: and it is called an Eſtoppel or Concluſion, becauſe a mans own Act or acceptance ſtoppeth or cloſeth up his mouth to alleage or plead the truth: And Littletons caſe here proveth this deſcription.

Li.2.f.4.b. Goddards caſe V.Sect.41.& 693. 695., 679.

Touching Eſtoppels, which is an excellent & curious kind of learning, itis tobe obſerved, that there be three kind of Eſtoppels, viz. By matter of Record, By matter in Writing, and By matter in Paiis.

(a) By matter of Record, viz. By Letters Patents, Fine, Recovery, Pleading, taking of Continuance, Confeſſion, Imparlance, Warrant of Attorney, Admittance.

(a) 43 Aſſ.29.8 H.4.7.8 22.Aſſ.54. 15 E.3.Eſtop 239.4 E.3.ib.133.

(b) By matter in Writing, as by Deed indented, by making of an Acquittance by Deed indented, or Deed poll, (c) by Defeaſance by Deed indented or Deed poll.

(b) 4 H.41. 8 H.7.6. 13 H.7.24.15 E.4.28.41.E. 3.Eſtop.12.12.R.2.ib. 212.
(c) 8 R.2. Eſtop.283.35 H.6.18.3 H.6.16. 16 H 7.5. 34 H.6.19.14 H.4. 29.

By matter in Paiis, as by livery, by Entry, by Acceptance of Rent, by Partition, and by Acceptance of an Eſtate as here in the caſe that Littleton putteth, whereof Littleton maketh a ſpecial obſervation, that a man ſhall be eſtopped by matter in the Countrey, without any Writing.

To make the Reader more capable of the learning of Eſtoppels, theſe few Rules, amongſt others, are to be known,

(d) 33 H.6.19.50.30 H. 6.2.31 E.3.Eſtop.240.

(d) Firſt, That every Eſtoppel ought to be reciprocal, that is, to binde both parties; and this is the reaſon, that regularly a Stranger ſhall neither take advantage, nor be bound by the Eſtoppel, (e) Privies in Blood, as the Heire, Privies in Eſtate, as the Feoffee, Aſſee, &c. Privies in Law, as the Lord by Eſcheat: Tenant by the Curteſie, Tenant in Dower, the Incumbent

33.Aſſ.18.30.Aſſ.51.14. Aſſ.9.18 E.4.1.
(e) 8.Aſſ.53.Br.Fines 73. 8 H.6.17. 21 E.3.35.38 E.3.31.20 E.3.Eſtop. 187.

Incumbent of a Benefice, and others that come under by Act in Law, or in the Poſt, ſhall be bound and take advantage of Eſtoppels, and that a Rebutter is a kind of Eſtoppel.

(i) 21 E.4.4. 23.Aſſ.14. 17 H.6.Eſtop.273. 18 E. 3.30.7 H.7 6.& 16.

(i) Secondly, That every Eſtoppel, becauſe it concludeth a man to alleage the truth, muſt be certain to every intent, and not to be taken by argument or inference.

(g) 46 E.3.33.19 Aſſ.38. Pl.Com.398.

(g) Thirdly, Every Eſtoppel ought to be a preciſe affirmation of that which maketh the Eſtoppel, and not be ſpoken impersonally, as if it be ſaid, Ut dicitur, quia impersonalitas non concludit, nec ligat; impersonalis dicitur, quia ſine perſona. (h) Neither doth a recital conclude, becauſe it is no direct affirmation.

(h) 35 H.6.33.46 E.3.12 49 E.3.14.8 Aſſ.3.45. Aſſ.5.3.El.Dy 196.11. El.ibid.280. 9 H.6.60.

(i) Fourthly, a matter alleaged that is neither traverſable nor material, ſhall not eſtoppe.

(i) 5 E.4.7.8 E.4.19.10 E.4.12. 22 E.4.38.32. Aſſ.9.35 H.6.10.

(k) Fifthly, Regularly a man ſhall not be concluded by acceptance or the like, before his Title accrued.

(k) 33 H.6.16.4 E.3.22 6 H.4 7 31 E.1.Gard. 155.F.N.B. 142 E.

(l) Sixthly, Eſtoppel againſt Eſtoppel doth put the matter at large.

(l) 12 H.7.4.20 H.6.29. 3 H.4.9.4 E.3.4.11 H. 4.30.

(m) Seventhly, Matters alleaged by way of ſuppoſal in Counts, ſhall not conclude after Non-ſuit: otherwiſe it is after judgement given; and after Non-ſuit, albeit the ſuppoſal in the Count ſhall not conclude, yet the Barre, Title, Replication, or other pleading of either party, which is preciſely alleaged, ſhall conclude after Non-ſuit, and hereby are the Books reconciled.

(m) 2 R.3.14. 2 R.2.Eſtoppel.240 n.3.21. 12 E.4.13.18 E.3.31.35.44 E.3.45. 17 Aſſ.27.45 E. 3 2. 21 H.7.24.5 E.4. 7 7 E.4.19 3 E.4.11.4. E.3.54.7 E.6.Br.Eſtop. 162.11 H.4 30.30 E.3. 21.31 Aſſ.14.

Eighthly, Where the verity is apparant in the ſame Record, there the adverſe party ſhall not be eſtopped to take advantage of the truth, for he cannot be eſtopped to alleage the truth, when the truth appeareth of Record. (n) If a Fine be levied without any original, it is voydable, but not void, but if an Original be brought, and a Retraxit entred, and after that, a Concord is made, or a Fine levied, this is void, in reſpect the verity appeareth of Record: (o) An Impropriation is made after the death of an Incumbent, to a Biſhop and his Succeſſors, the Biſhop by Indenture demiſeth the Parſonage for forty years, to begin after the death of the Incumbent, the Dean and Chapter confirmeth it, the Incumbent dieth, this Demiſe ſhall not conclude, for that it appeareth that he had nothing in the Impropriation till after the death of the Incumbent.

(n) 37 Aſſ.17 38 H.6. 12. 5.El.Dy.222.

(o) 7.El.Dy.244.

(p) Ninthly, Where the Record of the Eſtoppel doth run to the diſability or legitimation of the perſon, there all ſtrangers ſhall take benefit of that Record, as Outlawrie, Excommengement, Profeſſion, Attainder of Præmunire, of Felonie, &c. Baſtardy, Mulierty, and ſhall conclude the party, though they be ſtrangers to the Record, Vide in Littleton cap. Villenage, Sect.196, 197, &c. But of a Record concerning the name of the perſon, quality, or addition, no ſtranger ſhall take advantage, becauſe he ſhall not be bound by it. But nota Reader, That in caſe of the Mulierty prima facie, an Eſtranger ſhall take benefit of it, &c. But yet becauſe he may be a Mulier by the Eccleſiaſtical Law, and a Baſtard by the Common Law, therefore againſt ſuch a Certificate pleaded, the adverſe party may alleage the ſpecial matter, and confeſſe the Certificate of the Biſhop according to the Eccleſiaſtical Law, and alleage further the ſpecial matter according to the Common Law, whereunto the adverſe party muſt anſwer, and ſo are the Books that treat of this matter, to be reconciled. But now let us return to Littleton.

(p) Bract.fo.420 26 Aſſ. 64.39 Aſſ.10.11 H.4.84. 7 H.6.7.33.Aſſ.5.11 E.3. Eſtop.229. 21 E.3.39. 19 R.2. Eſtop.28.23 E.3. ib. 23.33 E. 3. Eſtop. Stath.Latat.de 9 H.6.c. 11. 30 H.6.2. Doct.& Stud.69.34 H.6.39.18 E. 41.b. 10 E.4. 16.

Sect. 668.

¶ *La Feme pria deſtre reſceive & ſoit reſceive.* Receipt, Receptio, commeth of the Latine Verbe Recipere, ſo called becauſe the wife upon the default of her husband, is received as a Feme ſole alone, without her husband, to defend her right, and it is alſo called Defenſio juris: and in this caſe the wife may be received by the (a) Statute, and yet (b) ancient Authors who wrote before the Statute, do ſpeak of a kind of Receit at the Common Law. The Civilians call Receit. Admiſſionem tertii pro ſuo intereſſe, which more properly is reſembled to the receit of him in the reverſion or remainder, that is no part to the writ.

20 E.1.Defenſio juris.

(a) W.2.ca.3.

(b) Bract.fo 393, Mir.li.3 cap.Exceptions.

¶ MEs ſi en action de Waſt le baron fait default a le graund diſtreſſe, et la feme pria deſtre receiue et ſoit receiue, el monſtra bien tout le matter, et coment el eſt en ſon Remitter, et el barrera le Leſſor de ſon Action, &c.

But if in the Action of Waſt the Husband make default to the Grand Diſtreſs, and the Wife pray to be received, and is received, ſhe may well ſhew the whole matter, and how ſhe is in her Remitter, and ſhe ſhall barre the Leſſor of his Action, &c.

Sect.

Sect. 669.

CAr en chescun cas lou feme est receiue p̃ default son baron, el pledera & auera ĩ laduantage en plee pledant, come el fuisoit feme sole, &c. Et coment q̃ lalienee fist le leas al baron & a sa feme, p fait endent, vncore ceo est remitter a la fem̃. Et auxy coment que lalienee rendist mesme la terre al baron & a sa fem̃ per fine p̃ terme de lour vies, vncore ceo est vn remitter al feme, pur ceo que feme couert que prent estate per fine, ne serra my examine per les Justices, &c.

FOr in every Case where the wife is received for default of her husband, she shall plead & have the same advãtage in pleading, as she were a woman sole, &c. and albeit that the alienee made the lease to the husband and wife by deed indented, yet this is a remitter to the wife. And also albeit the alienee rendereth the same land to the husband and his wife by fine for term of their lives, yet this is a remitter to the wife, because a feme covert which takes an estate by fine shall not be examined by the Justices &c.

¶ *Come el fuisoit feme sole, &c.* In this Section four things are to be understood.

First, when a Feme covert is received that she shall plead as if she were sole. And this is regularly true, yet holdeth not in all cases, (c) for if a Feme covert be received in an Assise, and plead a Record and fail, therefore she shall not be adjudged a Disseisor, as she should be if she were sole, &c. So if a Feme covert only levie a fine executory, and a Scire facias is brought against her and her husband, if she be received upon the default of her husband, she shall bar the Conusee, which if she had been sole, she could not do, and in some other Cases.

(c) 37 Ass. 1.

17 Ass. 17. 29 E. 3. 43. 5 E. 3. Voucher 178.

Secondly, that though the estate taken back be by deed indented, yet that shall not hinder the Remitter in case of a Feme covert, or an Infant.

Thirdly, that though it be by fine surrender, yet that shall not hinder the Remitter, because a Feme covert is not to be examined upon any fine, but when she and her husband pass some estate or interest, or release her right by a fine of the Lands or Tenements.

¶ *Ne serra my examine per les Justices, &c.* The examination of a Feme Covert ought to be secret, and the effect is to examine her whether she be content to levy a fine of such Lands (naming them particularly and distinctly, and the state that passeth by the fine) of her own voluntary free will, and not by threats, menaces, or any other compulsory means.

Fourthly, if the husband levy a fine of his wifes Lands, and the Conusee grant and render the Land to the husband and wife, although the wife be not party to the original, nor to the Conusans, and therefore she ought not by the Law to take any present estate but by way of Remainder only: yet here it is proved by Littleton, that the grant and render de facto to the wife in præsenti is not void, for then it could not work a Remitter, but voidably by Writ of Error, and that a voidable estate doth work a Remitter.

Trin. 27 Eliz. Inter Owen and Morgan; Rot. 276. in Banco Communi. Lib. 3. fol. 5. the Marquess of Winchesters Case. 7 E. 3. 64. 13 E. 3. Voucher. 119.

Sect. 670.

ET hic nota, que quant al-cun chose passera de la feme que est couert de baron per force dun

AND here note, that when any thing shall pass from the wife which is covert of a husband by

dun fine; ſicome le baron et la feñ
ſelont vn conuſance de droit a vn
auter, &c. ou ſeloyent vn grant
et render a vn auter, ou releſſent
per fine a auter, & ſic de ſimilibus,
lou le droit del feñ paſſeroit del
feme p force de meſme le fine, en
touts tielx cales la feñ ſerra exa-
mine deuaunt q̃ la fine ſoit accept
pur ceo q̃ tiels fines concluderont
tiels feñs couerts a touts iours,
&c. Mes lou riens eſt moue en le
fine forſque tantſolement que le
baron, et la feme preignont eſtate
per force de meſme le fine, ceo ne
concluder la feme, pur ceo que en
tiel cas el iammes ne ſerra my
examine, &c.

force of a fine: As if the husband and wife make Conuſance of right to another, &c. or make a grant and render to another, or releaſe by fine unto another, *& ſic de ſimilibus*, where the right of the wife ſhall paſs from the wife by force of the ſame fine, in all ſuch caſes the wife ſhall be examined before that the fine be taken, becauſe that ſuch fines ſhall conclude ſuch femes coverts for ever. But where nothing is moved in the fine but only that the husband and wife do take an eſtate by force of the ſaid fine, this ſhall not conclude the wife, for that in ſuch caſe ſhe ſhall not be at all examined, &c.

(d) 15 E. 4. 28. 24 E. 3. 31. 42 E. 3. 6. 3 H. 6. 42. 20 E. 3. tit. Cui in vita. 10 (*) 29 E. 3. 43. 46 E. 3. 5.

QVant aſcun choſe paſſera de la feme covert, *&c. per force dun fine, &c.* And of this opinion is (d) Littleton in our Books.

* There fore if the husband and wife be Tenants in ſpecial taple, and they levy a fine at the Common Law, and after the husband and wife take back an eſtate to them and their heirs, in this caſe the eſtate tail is not barred, and yet againſt a fine levied by her ſelf ſhe cannot be remitted, becauſe thereupon ſhe was examined: but in that caſe if the Land deſcend to her iſſue ſhe ſhall be remitted.

Sect. 671.

ITem, ſi tenant en taile diſ-
continua le taile, et ad iſſue
file, et mozult, et la file eſteant
de pleine age prent baron, et le
diſcontinuee fait vn releas de ceo
al baron et a ſa feme pur terme
de lour vies, ceo eſt vn Remit-
ter al feme, et la feme eſt eins
per force de le taile, Cauſa qua
ſupra.

ALſo if tenant in taile diſcontinue the taile, and hath iſſue a daughter & dieth, and the daughter being of full age taketh husband and the Diſcontinuee make a releaſe of this to the husband and wife for term of their lives, this is a Remitter to the wife, and the wife is in by force of the taile, *Cauſa qua ſupra, &c.*

ET la feme eſteant de plein age prent baron, *&c.* Here it appeareth that her full age when ſhe took Baron is not material, but her coverture at the taking back of the eſtate. And ſo note a diverſity between a Remitter and a diſcent. For if a woman be diſſeiſed, and being of full age taketh husband, and then the Diſſeiſor dieth ſeiſed, this Diſcent ſhall bind the wife, albeit ſhe was covert when the Diſcent was caſt, becauſe ſhe was of full age when ſhe took husband, as appeareth before in the Chapter of Diſcents. But albeit the wife that hath an antient right, and being of full age taketh a husband, and the Diſcontinuee letteth the Land to the husband and wife for their lives, this is a Remitter to the wife. For Remitters to antient rights are favoured in Law.

Sect.

Sect. 672.

¶ Item, ſi terre ſoit done a le baron et a ſa feme, auer et tener a eux et a les heirs de lour deux corps engendres, et puis le baron aliena la terre en fée, et reprent eſtate a luy et a ſa feñ pur terme de lour deux vies, en ceſt cas il eſt remitter en fait a le baron et a ſa feme naugre l'baron. Car il ne poit eſtre vn remitter en ceſt cas a la feme, ſinonque ſoit vn remitter a le baron, pur ceo que le baron et ſa feme ſont tout vn meſme perſon en ley, coment que le baron eſt eſtoppe de claymer. Et pur ceo, ceo eſt vn remitter en luy enconter ſon alienation et ſon repriſel demeſne, come eſt dit adeuant.

ALſo if land be giv̄e to the huſband and to his wife, to have and to hold to them and to the heirs of their two bodies begotten, and after the husband alien the land in fee, and take back an eſtate to him and to his wife for terme of their two lives, in this caſe this is a remitter in deed to the husband and to his wife, mauger the husband. For it cannot be a remitter in this caſe to the wife, unleſs it be a remitter to the husband, becauſe the husband and wife are all one ſame perſon in Law, though the husband be ſtopped to claime it: And therefore this is a remitter againſt his own alienation and repriſel, as is ſaid before.

¶ Here it appeareth that the husband againſt his own alienation, if he had taken the eſtate to him alone, could not have been remitted. But when the eſtate is made to the husband and wife, albeit they be but one perſon in Law, and no moities between them, yet for that the wife cannot be remitted in this caſe, unleſs the husband be remitted alſo, and for that remitters, as hath been often ſaid, are favoured in Law becauſe thereby the more antient and better rights are reſtored again; therefore in this caſe in judgement of Law both husband and wife are remitted. Which is worthy of great obſervation.

Sect. 673.

¶ Item, ſi terre ſoit done a vn feme en taile, le remainder a vn auter en tayle, le remainder a le tierce en tayle, le remainder al quart en fée, et la feñ prent baron, et le baron diſcontinua la terre en fée, per cel diſcontinuance touts les remainders ſont diſcontinues. Car ſi la feñ deuiaſt ſans iſſue, ceux en le remainder naueront aſcun remedie forſque de ſuer lour briefes de Formedon en le remainder quant

ALſo if land be given to a woman in taile, the remainder to another in taile, the remainder to the third in taile, the remainder to the fourth in fee, and the woman taketh husband, and the husband diſcontinue the land in fee, by this Diſcontinuance all the remainders are diſcontinued. For if the wife die without iſſue, they in the remainder ſhall not have any remedie but to ſue their writs of *Formedon* in the remainder, when

quãt il auient a lour temps. Mes ſi apres tiel diſcontinuance, eſtate ſoit fait a le baron et ſa feme pur terme de lour deux vies, ou pur terme dauter vie, ou auter eſtate, &c. pur ceo que ceo eſt vn remitter al feme, ceo eſt auxy vn remitter a touts ceux en le remainder. Car apres ceo que la feme que eſt en ſon remitter morust ſans iſſue, ceux en le remainder poyent enter, &c. ſans aſcun action ſuer, &c. En meſme le maner eſt de ceux que ount la reuerſion apres tiel tailes.

it comes to their times. But if after ſuch diſcontinuance, an eſtate be made to the husband and wife for terme of their two lives, or for terme of another mans life, or other eſtate, &c. for that this is a remitter to the wife, this is alſo a remitter to all them in the remainder. For after that that the wife which is in her remitter be dead without iſſue, they in the remainder may enter, &c. without any action ſuing, &c. In the ſame manner is it of thoſe which have the reverſion after ſuch entails.

41 E. 3 17. 41 Aſſ. 1. 36. Aſſ. p. 4.

LIttleton having ſpoken of Remitters to the iſſue in taile, who is privy in blood, and to the wife who is privy in perſon, now he ſpeaketh of Remitters to them in reverſion or remainder expectant, upon an eſtate taile who are privy in eſtate. And this caſe proveth that the wife is remitted preſently, for the equity of the Law requireth that as the diſcontinuance of the eſtate in taile is a diſcontinuance of the reverſion or remainder, ſo, that the Remitter to the eſtate in taile, ſhould be a Remitter to them in the reverſion or remainder.

44 Aſſ. p. 15. 44 E. 3. 30.

Tenant for life of the remainder to A. in taile, the remainder to B. in fee, Tenant for life is diſſeiſed, a collateral Anceſtor of A releaſeth with warranty and dieth, whereby the eſtate taile is barred, the Tenant for life re-entreth, the Diſſeiſor hath an eſtate in fee ſimple determinable upon the ſtate taile, and the remainder of B. is veſted in him, and ſo note in this caſe the eſtate for life, and the remainder in fee are veſted and remitted, and an eſtate of inheritance left in the diſſeiſor.

20 E. 3. Aid. 29.

If a Fine be levied ſur grant & render to one for life or in taile, the remainder in fee, if Tenant for life, or in taile, execute the eſtate for life or in taile, this is an execution of the remainder.

Vid. Pl. Com. 489. Nichols caſe & fol. 553. in Walſinghams caſe. 27 Eliz. Dier 344. 25 E. 3 48. tit. Reſceit. 28. 49 E. 3. 16.

A gift in taile is made to B. the remainder to C. in fee, B. diſcontinueth and taketh back an eſtate in taile, the remainder in fee to the King by deed inrolled, Tenant in taile dieth, his iſſue is remitted, and conſequently the remainder, as Littleton here ſaith, and the diverſity is (a) betwixt an act in Law, for that may devеſt an eſtate out of the King, and a tortious act, or entry, or a falſe and a feigned recovery againſt Tenant for life or in taile, which ſhall never devеſt any eſtate, remainder, or reverſion out of the King. (b) But a recovery by good title againſt Tenant for life, or in taile, where the remainder is to the King by defeaſible title ſhall devеſt the remainder out of the King, and reſtore and remit the right owners.

(a) Seignior Staffords caſe, Lib. 8. fol. 76. b. (b) Cholmleys caſe, lib 2. 53. 7. R. 2. Aide le Roy. 01. 22 E. 3. 7.

Sect. 674, 675.

FEint & faux action. 1. Actio ficta & falſa, But hereof Littleton ſpeaketh himſelf in this Chapter.

Quod ei deforceat, is a writ that is given by (c) Statute to any Tenant for life or in taple upon a Recovery by default againſt them in a Præcipe, and lyeth againſt the

(c) W. 2. cap. 4.

ITem ſi hom leſſa vn meaſe a vn feme pur terme de ſa vie, ſauant l'reuerſion al leſſour, et puis vn ſuiſt vn feint et faux action enuers la feme et recouerait le meaſe enuers luy per default, iſſint que la

ALſo if a man let a houſe to a woman for terme of her life, ſaving the reverſion to the Leſſor, and after one ſue a feigned and falſe action againſt the woman, and recovereth the houſe againſt her by default, ſo as the

la feme puit auer enuers luy vn Quod ei deforceat, ſolonque le Statute de Weſtm̃ 2. oꝛe le reuerſion le Leſſoꝛ eſt diſcontinue, iſſint que il ne poit auer aſcun action de waſt. Mes en ceſt caſe ſi la feꝛm̃ prent baron, & celuy que recouerait leſſa le meaſe al baron & a ſa feme pur terme de lour deux vies, la feme eſt eins en ſon remitter per force del primer leaſe.

woman may have againſt him a *Quod ei deforceat*, according to the Statute of Weſtm. 2. now the reverſion of the Leſſor is diſcontinued, ſo that he cannot have any action of waſte. But in this caſe if the woman take huſband, and he which recovereth let the houſe to the huſband and his wife for terme of their two lives the wife is in her Remitter by force of the firſt Leaſe.

Sect. 675.

¶ ET ſi le baron & la feme font Waſt, le primer leſſoꝛ auera enuers eux bꝛe de Waſt, pur ceo que entant que la feme eſt en ſon remitter, il eſt remiſe a ſon reuerſiõ. Mes ſemble en ceſt cas ſi celuy que recouerait per l'faux action, voiſe poꝛter auter bꝛieſe de Waſt enuers le baron & ſa feme, le baron nad auter remedy enuers luy, mes de faire default a la graund diſtres, &c. et cauſer la feme deſtre receiue, et d pleder cel matter ẽuers le ſecõd leſſoꝛ, et monſtrer coment laction per que il recouerait fuit faux et feint ẽley, &c. iſſint l'fẽe poit luy barrer, &c.

AND if the husband and wife make waſte, the firſt Leſſor ſhall have a writ of waſt againſt them, for that inaſmuch as the wife is in her remitter, he is remitted to his reverſion. But it ſeemeth in this caſe if he that recovereth by the falſe action will bring another writ of waſte againſt the husband & his wife, the husband hath no other remedy againſt him, but to make default to the grand diſtreſs, &c. and cauſe the wife to be received, and to plead this matter againſt the ſecond Leſſor, and ſhew how the action wherby he recovered was falſe and fained in law, &c. ſo the wife may bar him.

recoveroꝛ and his heires in which caſe the particular Tenant was without remedy at the Common Law, becauſe he could not have a Writ of Right. And it is called a Quod ei deforceat, foꝛ that they are part of the woꝛds of that Writ, viz. Præcipe A. quod, &c. reddat B. unum meſuagium, &c. quod clamat eſſe jus & mariagium ſuum, & quod idem A. ei injuſtè deforceat. Bracton lib. 4. 367. Fleta, lib. 5. cap. 22. & li. 6 cap. 14. 7 E. 3. 62. F.N.B. 155.

¶ *Recoueraſt, &c. per default.* There hath been a queſtion in our books upon theſe woꝛds (By default) as foꝛ example, whether a recovery had by default in an Action of Waſte againſt Tenant in Dower, oꝛ by the Courteſie, a Quod ei deforceat lyeth by the ſaid Statute. And divers hold opinion, that in that caſe no Quod ei deforceat lieth, foꝛ that judgement is not given by default, foꝛ notwithſtanding the default, there goeth out a writ to enquire De vaſto facto, & quod vaſtum prædictum A. (le defendant) fecit. So as the Defendant may give evidence, and the Juꝛoꝛs may finde foꝛ the Defendant, that no waſte was done: As in the Aſſiſe albeit it be awarded by Default, yet may the Tenant give evidence, and the Recognitoꝛs of the Aſſiſe may finde foꝛ the Tenant, and therefoꝛe in thoſe caſes, the Defendant oꝛ Tenant Non amittit per defaltam, as the Statute and Littleton ſpeaketh, and they cite F. N. B. in the point. W.2. cap.4. F.N.B.fol.155.B.

Secondly, they hold that a Quod ei deforceat lieth where the Tenant can have no remedy by Attaint, but in this caſe (ſay they) an Attaint doth lye. 2 H.4.2. 21 H.6.56. 41 E.3.8.3 H.6.29. 22 E.3.19.

Thirdly, they hold, that in an Action of waſte, although

though it be brought against a Tenant in Dower or Tenant by the Courtesie that have a freehold, yet the dammages are the principal, for they were recoverable against Tenant in Dower and by the Courtesie by the Common Law, and the Statute of Gloucester gave the place wasted but for a penalty, so as the nature of the Action (say they) remaineth still to be personal, for that the dammages are the principal; (d) and in proof hereof they cite divers Authorities in Law. And if two bring an Action of Waste, the release of one of them is a good barre against the other, (e) and so resolved by the whole Court; which proveth (say they) that the dammages are the principal, for if the Land were the principal, the release of one of them should not barre the other, no more than in an Assise, a Writ of Ward, an Ejectione firmæ, &c.

(d) 34 H.6.7. 40 E.3.37 & 38 E.3.

(e) 9 H.5.15.

30 H.6.tit.Bar.59.

Lastly, they say, That in Actions where damages are to be recovered, and the Land is the principal, the Demandant never counteth to dammages, and yet shall recover them: but in an Action of waste the Plaintiffe counteth to his dammage, and if the dammages be the principal, then clearly no Quod ei deforceat lieth.

Others do hold the contrary; and as to the first they say, That albeit that in the Writ of Waste judgement is not only given upon the default, yet the default is the principal, and the cause of awarding of the Writ to enquire of the Waste as an incident thereunto: and the Law alwayes hath respect to the first and principal cause, and therefore upon such a Recovery (*) a Writ of Deceit lieth, and that writ lieth not but where the Recovery is by default. So in an Action of Waste against the Husband & Wife, upon the default of the Husband the Wife shall be received, and yet the Statute there speaketh also, per defaltam. So upon such a recovery in Waste against the Baron and Feme by default, the Wife shall have a Cui in vita by the Statute, and it speaketh where the Recovery is per defaltam. And albeit the Defendant may give in evidence, if he knoweth it, yet when he makes default the Law presumeth he knoweth not of it, and it may be that he in truth knew not of it, and therefore it is reason, that seeing the Statute, that is a beneficial Statute, hath given it him, that he be admitted to his Quod ei deforceat, in which writ the truth and right shall be tryed. And so it is of a recovery by default in an Assise, albeit the Recognitors of the Assise give a verdict, a Quod ei deforceat lyeth. And all this as to this point was resolved by the whole Court of Common Pleas, and so the doubt in 41.E.3.8. well resolved. Nota, if Tenant for life make default after default, and he in the reversion is received and plead to Issue, and it is found by verdict for the Demandant, the default and the verdict are causes of the Judgement, and yet the Tenant shall have a Quod ei deforceat.

(*) 17 E.3.58.29 E.3.42 F.N.B.9.b. 12 H.4.4. 19 E.2.Disceit.56. W.2.cap.3.3 H.4.fol.1.

W.2.ca.3.9 E.4.16.

41 E.3.8.b. 2 H.4.2. 21 H.6.56. 44 E.3.42. Br.tit. Quod ei deforc.4. Pasch.33. El.Rot.1125. inter Ed. Elmer & El. sa feme, tenen Dower. demandanes,& Wil. Thaker ten. in Quod ei deforceat.

As to the second objection, That the Defendant may have an Attaint, First, it was utterly denied of the other part, (f) that an Attaint did lie in this case, for though it be taken by the Oath of twelve men, yet it is but an enquest of Office, whereupon no Attaint did lye on either party, as upon an enquiry of Collusion, although it be by one Juris, nor upon a Verdict in a Quale jus. Secondly, Admitting that an Attaint did lye in that case, yet it followeth not ex Consequenti, that a Quod ei deforceat did not lye, (g) for if an Assise be taken by default, a Quod ei deforceat doth lye, and yet the party may have an Attaint, for this is no Conquest of Office, but a Recognition by the Recognitors of an Assise, who were returned the first day, and not returned upon the awarding of the Assise by default. And as to the second Objection, of this opinion was the whole Court in Edward Elmers case above mentioned. As to the third Objection, That the dammages should be the principal, because they were at the Common Law, that is an argument (say the other side): that they are more antient, but not that they are more principal, and treble dammages were not at the Common Law, (for the Common Law never giveth more dammage than the loss amounteth unto) but are given by the Statute of Gloucester, but the place wasted is worthier being in the Realty, than dammages that be in the personalty. Et omne majus dignum trahit ad se minus dignum, quamvis minus dignum sit antiquius, & à digniori debet fieri denominatio. And it is confessed, That in an Action of Waste against Tenant for life, or for years, the place wasted is the principal, because the Statute of Gloucester doth give the place wasted and treble dammages at one time; for no prohibition or Action of Waste lay against them at the Common Law, and in an Action of Waste, if the Defendant confesse the Action, the Plaintiffe may have judgement for the place wasted, and release the dammages, which proveth (and so Fitzherbert collecteth) that the dammages are not the principal, for a man shall never release the principal, and have judgement of the accessory: and an Action of Waste against Tenant for life, is as real as an Action against Tenant in Dower. And as to the case of 9.H.5. cited on the other side, it was answered that it was an Action in the Tenuit, which is only in the personalty, and then the Release of the one doth bar both, neither could summons and severance lie in that case, (h) but in an Action of Waste (in the Tenet) either against Tenant for life or for years, the release of the one doth not bar the other, and in both those cases summons and severance doth lye, and this point was also resolved accordingly in Edward Elmers Case. But when these three points were resolved by the Court for the Demandant, then the Counsel of the Tenant moved in arrest of judgement another point, viz.

(f) 33 E.3.Qd ei deforc. Pl.ult.F.N.B.156. V.Flet.l.5.c.11. 48 E.3. 19.40 Ass.23.33 H.6.25. 39 H.6.1. F.N.B.107.

(g) 17 E.2.Attaint 69. 21 H.6.56. 34 H.6.12.

34 H.6.7.Wast.50.

(h) 6 E.3.47. 48 E.3. 19.

viz. That the judgement was given upon a Nihil dicit, which is alwayes after apparance, and not per defaltam, and thereupon judgement was stayed.

But to return to Littleton Here he openeth a secret of Law, for the cause of this Remitter is, for that the Tenant for life in this case might have a Quod ei deforceat, for so Littleton saith: Issint que il poit auer Quod ei deforceat: Now it appeareth by our Books, That the Tenant for life at the Common Law was remediless, because he could not have (as hath been said) a writ of Right, and consequently the Feme covert in this case could not be remitted by the taking of an Estate to her husband and her, because her right was remediless, and could have no Action. But when an Act of Parliament or a Custom doth alter the reason and cause thereof, thereby the Common Law it self is altered, if the Act of Parliament and Custom be pursued, for Alterata causa & ratione Legis, alteratur & Lex, & cessante causa seu ratione Legis cessat & Lex: as in this case the Statute of W. 2. giving remedy to this Feme Tenant for life, in this it giveth her ability to be remitted, because her right is not now remediless, but she hath an Action to recover it.

Vide for the cases upon this ground. 14 H.7.11 per Fineux. 27 H.8.4.b. Aid. 35 H.6. Gard. 72. 29 E.3 5 per Wisbie Custom. Lib.3.fol 86. Justice Windhams cases 2. & b.

And Littleton warily putteth his case, That the recovery was had against the Feme while she was sole, for there was a time when it was a question, whether a Recovery being had by default against the Husband and Wife, (the Wife being Tenant for life) the said Statute gave a Quod ei deforceat to the Husband and Wife, for that the Statute gave it against Tenant in Dower and Tenant for life, &c. and here the Husband is not Tenant for life, but seised in the right of his Wife, and therefore out of the Statute: and of this opinion is one (g) Book, but (Apices juris non sunt jura, & parùm differunt quæ re concordant) the contrary hath been adjudged, and so that point is now in peace: and the like in case of recrit for him in reversion. But if the Husband and Wife lose by default, and the Husband die, the wife shall not have a Quod ei deforceat, for a Cui in vita is given to her in that case by a former Statute, viz. W. 2. cap. 3. These things are worthy of due observation, and points of excellent learning; and Littleton in our Books speaks of another kind of Quod ei deforceat at the Common Law, upon a Disseisin, which you may read. But now let us hear him in his Book.

(g) 4 E 3. 38. 33 E.3. Avowrie 255. 5 E.3.4.33 E.3. Avowrie 255 F.N.B.150. a. 5 E.3 5.a E.4.13. F.N.B.156. C. 33 H.6.46.a E.4 11. 19 E.4 2.

¶ *Le reuersion est discontinue, issint que il ne poit auer Action de Waste.*

Here it appeareth, That when the Reversion is devested, the Lessor cannot have an Action of Waste, because the Writ is, That the Lessee did waste ad exhæredationem of the Lessor and that Inheritance must continue at the time of the Action brought: And it is to be observed, That in an Action of Waste brought by the Lessor against the Lessee, the Lessee in respect of the privity cannot plead generally, Riens en le reuersion, viz (h) That the Lessor hath nothing in the Reversion, but he must shew how and by what means the Reversion is devested out of him: and this holdeth (as hath been said) between the Lessor and the Lessee; but if the Grantee of a Reversion bringeth an Action of Waste, the Lessee may plead generally, That he hath nothing in the Reversion. And yet in some special cases an Action of Waste shall lie, albeit the Lessor had nothing in the Reversion at the time of the Waste done: As if Tenant for life make a Feoffement in Fee upon condition, and waste is done, and after the Lessee re-enter for the condition broken, In this case the Lessor shall have an Action of Waste. And so if a Bishop make a Lease for life or years, and the Bishop die, the Lease, the See being void, doth swaste, the Successor shall have an Action of Waste. So if Lessee for life be disseised, and waste is done, the Lessee re-enter, an Action of Waste shall be maintained against the Lessee, and so in like cases: and yet in none of these cases the Plaintiffe in the Action of Waste had any thing in the Reversion at the time of the Waste made, but these especial cases have their several and especial reasons, as the learned Reader willeasily finde out.

45 E.3 21.44 E.3.34,35 F.N.B 60 23 H. 8. tit. Waste.Br.138.

(h) 46 E.3.20.8 H.6.13. 30 H. 6. 7.

Here note, That albeit the Action be false and feigned, yet is the Recovery so much respected in Law, as it worketh a Discontinuance. (i) But if Tenant for life suffer a common Recovery, or any other Recovery by covine and consent between the Tenant for life and the Recoveror, this is a forfeiture of his estate, and he in the Reversion may presently enter for the forfeiture. Since our Author wrote, the Statute of 14 El. cap. 8. hath been made concerning this matter, which is to be considered, (k) and hath been well construed and expounded, and needs not here to be repeated.

(i) 5 Ass.pl.3.5 E.3.Entr. Cong.42.15 E.3. Age 95 41 E.3.18. per Finchden. 22 E.3.2.b. Lib.1.fol.15. Sir Will. Pelhams case. 14 El.cap.8.

(k) Lib.3.fol.60.Lib.1. fol. 15.

And it is to be observed, That although the Discontinuance groweth by matter of Record, yet the Remitter may be wrought by matter in Pais: And of the residue of these two Sections sufficient hath been said before.

Sect.

Sect. 676.

¶ Item, ſi le baron diſcõtinua le terre de ſa feme, et puis repriſt eſtate a luy & a ſa feme, et al tierce perſon pur terñ de lour vies, ou en fee, ceo neſt vn remitter a la feme, forſque quant a la moity, & pur lauter moity el couient apres la mort ſon baron de ſuer vn briefe de Cui in vita.

ALſo if the Husband diſcontinue the land of his Wife, and after taketh back an eſtate to him & to his Wife, and to a third perſon for term of their lives, or in fee, this is no Remitter to the Wife, but as to the moity, and for the other moity ſhe muſt after the death of her husbãd ſue a writ of *Cui in vita.*

44 E.3.17.44 Aſſ.2. 43 Aſſ.3. Vid. Sect. 666.

¶ *Ceo neſt remitter forſque quant al moitie, &c.* Albeit there is Authority in our Bookes to the contrary, yet the Law is taken, as Littleton here holdeth it; and as before it appeareth in the like caſe in this Chapter, and for the reaſon therein expreſſed.

Sect. 677.

¶ *Et puis le baron reuient & agrea, &c.* In this caſe the eſtate is in the Feme Covert preſently by the livery before any agreement by the Husband and of this opinion is Littleton in our Bookes.

19.4.1.b.7 H.4.17. 1 H.7.16.b. 39 E.3. 30. 27 H.8.24.

¶ *Ala ouſter le mere.* If he had been within the Realm, it doth not alter the caſe.

¶ *Quare en ceſt caſe ſi le baron, &c.* Here is a queſtion moved by Littleton, whether the diſagreement of the Husband ſhall ouſte the Wife of her Remitter. And it ſeemeth that the diſagreement ſhall not devеſt the Remitter: Firſt, becauſe the eſtate made to the wife which wrought the Remitter is vaniſhed & wholly defeated, and therefore no diſagreement of the Husband can devеſt the eſtate gained by the leaſe, which by the Remitter was devеſted before.

Secondly, for that the Law having once reſtored her antient and better right will not ſuffer the diſagreement of the Husband to devеſt it out of her, and to revive the Diſ-

¶ Item, ſi le baron diſcõtinue la teſt ſa feme, & ala ouſter le mere, & le diſcontinuee lella meſme la terre al feñ pur terñ de ſa vie, et liuer a luy ſeiſin, et puis le baron reuyent, et agrea a cel liuerie de ſeiſin, c eſt vn Remitter a la Feme, et vncore ſi la Feme fuiſſoit ſole al temps de le leas fait a luy, ceo ne ſerroit a luy vn Remitter. Mes entant que el fuit couert de baron al temps de la leas, et de le liuerie de ſeiſin fait a luy, coment que el priſt ſolement le liuery de ſeiſin, ceo fuit vn Remitter a luy, pur ceo que feme couert ſerra adiudge ſicome

ALſo if the Husband diſcontinue the Land of his Wife, and goeth beyond ſea, and the Diſcontinuee let the ſame Land to the Wife for terme of her life, and deliver to her ſeiſin, and after the husband commeth back, and agreeth to this Livery of ſeiſin, this is a Remitter to the Wife, and yet, if the Wife had been ſole at the time of the leaſe made to her, this ſhould not be to her a Remitter, but inaſmuch as ſhe was covert baron at the time of the Leaſe, and Liverie of ſeiſin made unto her, albeit ſhe taketh only the livery of ſeiſin, this was a Remitter

ſicome enfant deins age en tiel cas, &c. Quære en ceſt cas ſi l' baron quant il reuiēt, voil diſagree a l' leas & liuery de ſeiſin fait a ſon feme en ſon abſence, ſi ceo ouſtera ſon feme de ſon Remitter, ou nemy, &c.

to her becauſe a Feme covert ſhall be adjudged as an Infant within age in ſuch a caſe, &c. *Quare* in this caſe if the Husband when he comes back will diſagree to the Jeaſe and livery of ſeiſin made to his wife in his abſence, if this ſhall ouſte his wife of her Remitter, or not, &c.

of the eſtates ſhe will. As if Lands be given to the Husband and wife, and their heirs, the husband make a feoffment in fee, the feoffee giveth the Land to the husband and wife and the heires of their two bodies, the husband dieth. In this caſe the wife may elect which of the eſtates ſhe will, for both eſtates are waiveable, and her time of election and power of waiver accrewed to her firſt after the deceaſe of her husband. If lands be given to a man and the heires females of his body, and he maketh a feoffment in fee, and take back an eſtate to him and his heires, and dieth, having iſſue a daughter, leaving his wife groſſement enſeint with a ſon and dieth, the daughter is remitted, and albeit the ſon be afterward born, he ſhall not devest the Remitter.

continuance and revest the wrongful eſtate in the Diſcontinuee.

Thirdly, for that Remitters tending to the advancement of ancient Rights are favoured in Law.

And ſo it is for the ſame cauſes, if the wife ſurvive her husband, ſhe cannot claim in by the purchaſe made during the coverture, but the Law judgeth her in her better right. But if both eſtates be waiveable, there albeit the wife prima facie is remitted, yet after the deceaſe of her husband, ſhe may elect which 41 E. 3. 18.

18 Eliz. Dier. 352.

Sect. 678.

¶ ITem, ſi le baron diſcontinua les tenements ſon feſn, & le diſcontinuee eſt diſſeiſie, & puis le diſſeiſour leſſa meſmes l'ſ tenements a l'baron & a ſon feſn pur terſn de vie, ceo eſt vn remitter a la feme. Mes ſi le baron et ſon feme fueront de covin & conſent que l' diſſeiſin doit eſte fait donques il neſt Remitter a ſon feſn pur ceo que el eſt diſſeiſereſſe: Mes ſi l' baron fuit de covin & conſent a le diſſeiſin, & nemy la feme, donqz

ALſo if the Huſband diſcontinue the Lands of his wife, and the diſcõtinuee is diſſeiſed, and after the Diſſeiſor letteth the ſame lands to the huſband and Wife for term of life, this is a Remitter to the wife. But if the husband and his Wife were of covine and conſent that the diſſeiſin ſhould be made, then it is no remitter to his Wife becauſe ſhe is a Diſſeiſereſſe. But if the huſband were of covin & conſent to the Diſſeiſin, and not the Wife

¶ *ET puis le diſſeiſor leſſa meſme les tenements, &c.* Note ſo much are remitters favoured in Law that the eſtate made by the Diſſeiſor (which commeth to the Land by wrong, and upon whom the entry of the Diſcontinuee is lawful) doth remit the wife, and deveſteth all out of the Diſcontinuee, albeit he hath a warranty of the Land. 18 E. 4. 2. b.

¶ *Mes ſi le baron & feme ſuer de covin & conſent, &c.* Here it appeareth that covin and conſent of the husband and wife doth hinder the remitter of the wife, for covine and conſent in many caſes to do a wrong, doth cheate a man right, and the ill manner doth make a good matter unlawful. 18 E. 4. ubi ſupra.

¶ *Couine.* Couina commeth of the French word Couine, and is a ſecret aſſent Pl. Com. 546. in Wimbiſhes caſe.

determined in the hearts of two or more to the defrauding and prejudice of another.

44 E. 3. 46. 11 H. 4 60. 44 Ass. 29. 19 H. 8. 12. 18 H. 8. 5. 11 E. 4 2. 7 H. 7 11.

A woman is lawfully intitled to have dower, and she is of covine and consent, that one

tiel leas fait al feme est vn remitter, pur ceo que nul default fuit en la feme.

then such Lease made to the wife is a Remitter, for that no default was in the wife.

shall disseise the Tenant of the Land, against whom she may recover her lawful Dower, all which is done accordingly, the Tenant may lawfully enter upon her, and avoid the recovery in respect of the covine. But if a Disseisor, Intrudor or abator do endow a woman that hath lawful title of Dower, this is good, and shall binde him that right hath, if there were no such covine or consent before the Disseisin, Abatement, or Intrusion.

41 Ass. p. 28. 25 Ass. p. 1. 27 Ass. 74. 15 E. 4. 4. 2. 12 Ass. p. 20.

And so it is in all cases where a man hath a rightful and just cause of Action, yet if he of covine and consent do raise up a Tenant by wrong against whom he may recover, the covine doth suffocate the right so as the recovery though it be upon a good title shall not bind, or restore the demandant to his right.

11 E. 4. 2. 15 E. 4. 23. 14 H. 8 13. 33 H. 6 5. 12 E. 4. 21. b.

If Tenant in taile and his issue disseise the discontinuee to the use of the Father, and the Father dieth, and the Land descendeth to the issue, he is not remitted against the Discontinuee in respect he was privy and party to the wrong, but in respect of all others he is remitted, and shall deraigne the first warranty. And so note a man may be remitted against one, and not against another.

A. and B. Joyntenants be intitled to a real Action against the heire of the Disseisor, A. cause the heire to be disseised, against whom A. and B. recover and sue execution. B. is remitted for that he was not party to the covine, and shall hold in common with A. but A. is not remitted for the reason that Littleton here sheweth.

F. N. B. 179. g. 22 E. 4. 9. 35 Ass. 5. 44 E. 3. 9. 23. 13 Ass. 1. Temps E. 1. Waite 128. 26 Ass. p. 7. 21 E. 4. 53. 21 H. 7. 35. 3 H. 4. 17.

¶ *Pur ceo que el est disseiseresse.* Nota, It is regularly true that a Feme Covert cannot be a Disseisoresse by her commandement or procurement precedent, nor by her assent or agrément subsequent, but by her actual entry, or proper act, she may be a Disseisoresse. Am therefore some do hold that Littleton must be intended, that the husband and wife were present when the Disseisin was done, and others do hold that Littleton is good Law, albeit she were absent, for that if her procurement or agreement be to be a wrong, to cause a Remitter unto her in this special case she shall faile of her end, and remitted she shall not be, but in this special case she shall be holden as a Disseisoresse by her covine and consent quatenus to hinder the Remitter. And here it appeareth, that albeit the husband be of covine and consent, &c. yet if the wife were not of covine and consent also, she shall be remitted, because as Littleton saith, there was no default in the wife.

Sect. 679.

¶ Item, si tiel discontinuee feoit estate de franktenement al baron & a son feme per fait endent, sur condition, &c. reseruant al discontinuee vn certaine rent, & pur default de payment vn re-entry, & pur ceo que le rent est aderere, le discontinuee enter, donques de cel entrie le feme auera vn Assise de Nouel disseisin, apres la mort son baron enuers le discontinuee, pur ceo que le condition fuit tout outerment aniente, entant que la feme fuit en s remitter, uncore le baron ouesque sa feme

ALso if such discontinuee make an estate of freehold to the husband and wife by Deed indented upon condition, &c. reserving to the discontinuee a certain rent, and for default of payment a re-entry, and for that the rent is behind the discontinuee enter, then for this entry the wife shall have an Assise of *Nouel disseisin*, after the death of her Husband against the Discontinuee, because the condition was altogether taken away, inasmuch as the Wife was in her Remitter, yet the husband with his wife can-

feme ne poient auer Aſſiſe, pur ceo que le baron eſt eſtoppe, &c.

not have an Aſſiſe becauſe the huſband is eſtopped, &c.

IT is hereby to be obſerved, that the wife is preſently remitted, and that the conditions, and rents, and all other things annexed to, or reſerved upon the Eſtate (that is vaniſhed and defeated) by the Remitter, are defeated alſo.

Pl. Com. in Amy Townſhends Caſe. 12 R. 2. tit. Remitter 12.

Sect. 680, & 681.

ITem, ſi le baron diſcontinua les tenements ſa feme, & reprit eſtate a luy pur terme de ſa vie, le remainder apres ſon deceaſe a ſa feme pur terme de ſa vie, en ceſt cas ceo neſt vn remitter a la feme durant la vie le baron, pur ceo que durant la vie le baron, la feme nad riens en le franktenement. Mes ſi en ceo cas la feme ſurueſquiſt le baron, ceo eſt vn remitter a la feme, pur ceo que vn franktenement en ley eſt iect ſur luy maugre le ſoen. Et entant que el ne poit auer action enuers nul auter perſon, & enuers luy meſme el ne poit auer action, pur ceo el eſt en ſ̄ Remitter. Car en ceſt cas, coment que la feſ̄ ne entra pas ēles tenements, vncore vn eſtrange que ad cauſe de auer action, poit ſuer ſon action enuers la feme de meſmes les tenements, pur ceo que el eſt tenant en ley, coment que el ne ſoit tenant en fait.

ALſo if the Husband diſcontinue the tenements of his wife, and take back an eſtate to him for life, the remainder after his deceaſe to his wife for term of her life, in this caſe this is no Remitter to the wife during the life of the husband, for that during the life of the Husband the Wife hath nothing in the freehold. But if in this caſe the Wife ſurviveth the Husband, this is a Remitter to the Wife, becauſe a freehold in Law is caſt upon her againſt her will. And inaſmuch as ſhe cannot have an action againſt any perſon, and againſt her ſelf ſhe cannot have an Action, therefore ſhe is in her remitter. For in this caſe although the wife doth not enter into the tenements, yet a ſtranger which hath cauſe to have an Action, may ſue his Action againſt the Wife for the ſame tenements, becauſe ſhe is Tenant in Law, albeit that ſhe be not Tenant in Deed.

Sect. 681.

CAr ſ̄ de franktenement en fait eſt celuy, q̄ ſil ſoit diſſeiſie de franktenement, il poit auer Aſſiſe. Mes tenant de franktenement en ley deuant ſon entre en fait, nauera my aſſiſe. Et ſi home ſoit ſeiſie de certeine terre, et ad iſſue fits quel prent feme

FOr tenant of freehold in deed is he, who, if he be diſſeiſed of the freehold, may have an Aſſiſe, but tenant of freehold in Law before his entry in deed, ſhall not have an Aſſiſe. And if a man be ſeiſed of certain Land, and hath iſſue a ſon who taketh wife, and

feme, et le pier deuie ſeiſie, et puis le fits deuie deuant aſcun entrie fait p luy en la terre, le feme le fits ſerra endowe en le tre, et vncore il nauoit nul franktenemẽt ẽ fait, mes il auoit vn fee et franktenement ẽ ley. Et iſſint nota, q Præcipe quod reddat poit auxybien eſtre maintenus enuers celuy que ad franktenement en ley, ſicome enuers celuy que ad le franktenement en fait.

the father dieth ſeiſed, and after the ſon dies before any entrie made by him into the land, the wife of the ſon ſhall be endowed in the land, and yet he had no freehold in Deed, but he had a fee and freehold in Law. And ſo note, that a *Præcipe quod reddat* may as well be maintained againſt him that hath the free hold in Law, as againſt him that hath the freehold in Deed.

18 H. 8. 3.

HEre five things are to be obſerved; Firſt, that a remainder expectant upon an eſtate for life worketh no Remitter, but when it fall in poſſeſſion: for before his time he can have no action, and no freehold is in him. Secondly, though the woman might waive the remainder, yet becauſe ſhe is preſently by the death of the husband Tenant to the Præcipe, it is within the rule of Remitter, and her power of waiver is not material. Thirdly, that a freehold in Law being caſt upon the woman by act of Law without any thing done or aſſented to by her, doth remit her, albeit ſhe be then ſole and of full age. Fourthly, that a Præcipe lyeth againſt one that hath but a freehold in Law. Fifthly, that a woman ſhall be endowed where the husband hath the inheritance, and but a freehold in Law, as hath been ſaid in the Chapter of Dower.

Vide Sect. 447. Bracton lib. 4. fol. 206. 237. Britton. 83. b. Fleta, lib. 3. cap. 15.

Sect. 682.

ITem, ſi tenant en taile ad iſſue deux fits de pleine age, et il leſſa la terre taile al eigne fits pur terme de ſa vie, le remainder al fits puiſne pur term de ſa vie, et puis le tenant en taile mozuſt, en ceſt cas leigne fits neſt pas en ſon Remitter, pur ceo que il prent eſtate de ſon pier. Mes ſi leigne fits mozuſt ſauns iſſue de ſon corps, donque ceo eſt vn remitter al puiſne frere, pur ceo que il eſt heire en le taile, et vn franktenement en le ley eſt eſcheate, et iecte ſur luy per force de le remainder, et il y ad nul enuers que il poit ſuer ſon action.

ALſo if tenant in taile hath iſſue two ſons of full age, & he letteth the land tailed to the eldeſt ſon for term of his life, the remainder to the younger ſon for term of his life, and after the Tenant in taile dieth, in this caſe the eldeſt ſon is not in his remitter, becauſe he took an eſtate of his Father. But if the eldeſt die without iſſue of his body, then this is a remitter to the younger brother, becauſe he is heire in taile, and a freehold in Law is eſcheated and caſt upon him by force of the remainder, and there is none againſt whom he may ſue his action.

(a) 13 E. 4. 10.
(b) Sect. 684, 685.

OF this opinion is (a) Littleton in our books, and of this ſufficient hath been ſaid in the next Section before. But hereafter (b) ſome explanation hereof.

Sect.

Sect. 683.

En meſme le maner eſt, lou home ſoit diſſeiſie, & le diſſeiſor morust ſeiſie, et les tenants diſcendont a ſon heire, & iheire le diſſeiſor fait vn leas a vn home de meſmes les tenements pur terme de vie, le remainder a le Diſſeiſé pur terme de vie, ou en taile, ou en fée, le tenant a terme de vie morust, ore ceo eſt vn remitter al Diſſeiſé, &c. Cauſa qua ſupra, &c.

IN the ſame manner it is, where a man is diſſeiſed, and the diſſeiſor dieth ſeiſed, and the tenements deſcend to his heire, and the heire of the diſſeiſor make a Leaſe to a man of the ſame tenements for term of life, the remainder to the Diſſeiſee for terme of life, or in taile, or in fee, the Tenant for life dieth, now this is a remitter to the Diſſeiſee, &c. *Cauſa qua ſupra, &c.*

¶ And this ſtandeth upon the ſame reaſon that the caſes in the two Sections precedent do. See the next Section following.

Sect. 684.

¶* NOta, ſi tenāt en taile enfeoffa ſon fits et vn autre per ſon fait de la terre taile en fée, et liuery de ſeiſin eſt fait a lauter accordant al fait, et le fits rien conuſant de ceo agréa a le feoffament, & puis celuy que prist le liuery de ſeiſin deuy, & le fits ne occupia la terre, ne prent aſcun profit del terre durant la vie le pier, & puis le pier morust, ore ceo eſt vn remitter al fits, pur ceo que le franktenement eſt iect ſur luy per le ſurviuor: Et nul default fuit en luy, pur ceo que il ne vnque a-

NOte, if Tenant in taile infeoffe his ſonne and another by his deed of the land intailed, in fee, and Livery of ſeiſin is made to the other according to the Deed, and the ſon not knowing of this agreeth to the feoffement, and after he which took the Livery of ſeiſin dieth, and the ſon doth not occupy the land, nor taketh any profit of the land during the life of the father, and after the father dieth, now this is a remitter to the ſon, becauſe the freehold is caſt upon him by the ſurvivor. And no default was in

¶* IT ſhould ſeem by this mark that this was an addition to Littleton, but it is of Littletons own words, and agreeth with the original, ſaving the original begun this Section thus, Item ſi tenant en taile. &c.

¶ *Per ſon fait, &c.* Here Littleton materially addeth by his Deed, for if a man intendeth to (b) make a feoffement by parol to A. and B. and he and B. come upon the land, A. being abſent, and make Livery to B. in the name both of B. and A. and to their heires this ſhall enure only to B. for neither can a man abſent take Livery nor make Livery without Deed.

(b) Temps H.8. Feoffements, Br. 72. 40 E.3. 41. 10 E.4. 1, 2. 15 E.4. 18. 18 E.4. 12. 22 H.6. 12.

¶ *Et liuerie de ſeiſin eſt fait a lauter accordant al fait, &c.* Note Livery being made to one according to the Deed, enureth to both, becauſe the Deed whereunto the Livery referreth is made to both, for the rule is, That Verba relata hoc maxime operantur per referentiam ut in eis inesse videntur.

¶ *Et le fits nient connuſant de ceo, ne agreea a le Feoffement.* Here it appeareth, That if the ſonne be Conuſant, and agreeth to the Feoffement, &c. this is no Remitter to him. And therefore if the Feoffement were made by Deed indented, and the ſon with the other ſealeth the Counterpart, and then the Feoffor maketh livery to the other according to the Deed, and the other dieth, the ſon is not remitted, becauſe he was Conuſant of the Feoffement, and agreed to the ſame, and Littleton ſaith in the Caſe that he putteth, That there was no default in the ſon, becauſe he agreed not to the Feoffement in the life of the Father: And ſo it ſeemeth, That if A. be ſeiſed in Taile, and have Iſſue two ſons, and by Deed indented between him of the one part, and the ſons of the other part, maketh a Leaſe to the eldeſt for life, the remainder to the ſecond in Fee, and dieth, and the eldeſt ſon dieth without Iſſue, the ſecond ſon is not remitted, becauſe he agreed to the remainder in the life of the Father, or if the like Eſtate had been made by Parol, if in the life of the Father the Tenant for life had been impleaded, and made default, and he in the remainder had been received, and thereby agreed to the remainder after the death of the father and the eldeſt ſon without Iſſue, the ſecond ſon ſhould not be remitted, becauſe he agreed to the remainder in the life of the father, all which is well warranted by the reaſon yelded by our Author in this Section.

Vide Sect. 683.

Sect. 685.

¶ Car ſi home ſoit diſſeiſie de certaine terre, et le Diſſeiſor fait vn Fait de Feoffement, per que il infeoffa B. C. et D. et le liuerie de ſeiſin eſt fait a B. et C. mes D. ne fuit al Liuerie de ſeiſin, ne vnqz agreea a le Feoffment, ne vnque voile prender les profits, &c. et puis B. et C. deuierent, et D. eux ſurueſquiſt, et le Diſſeiſee port ſon Briefe Sur diſſeiſin en le Per, enuers D. il monſtra tout le matter, coment il ne vnques agreea a le Feoffment, et iſſint il diſchargera luy de damages, iſſint que le Demandant ne recouera aſcuns dammages enuers luy, coment que il ſoit Tenant del franktenement del fre: Et vncore le ſtatute de Glouceſter cap. 1. voit, que le Diſſeiſee recouera damages en briefe de Entre, foundue ſur Diſſeiſin vers celuy que eſt troue tenant. Et ceo eſt vn proofe en lauter caſe, que entant que

FOr if a man be diſſeiſed of certain land, and the Diſſeiſour make a Deed of Feoffement, whereby he infeoffeth B. C. and D. and Livery of ſeiſin is made to B. and C. but D. was not at the Livery of Seiſin, nor ever agreed to the feoffment, nor ever would take the profits, &c. and after B. and C. die, and D. ſurvive them, and the Diſſeiſee bringeth his Writ upon Diſſeiſin in the *Per* againſt D. he ſhall ſhew all the matter, how he never agreed to the feoffement, and he ſhall diſcharge himſelf of Dammages, ſo as the Demaundant ſhall recover no dammages againſt him, although he be Tenant of the freehold of the Land. And yet the Statute of *Glouceſter cap.* 1. will, That the Diſſeiſee ſhall recover dammages in a Writ of Entry founded upon a Diſſeiſin againſt him which is found Tenant. And this is a proofe in the other Caſe,

que liſſue en le Taile auient a le franktenement, & nemy per ſon fait, ne per ſon agreament, mes apres la mort ſon pier, ceo eſt vn Remitter a luy, entant que il ne poit ſuer Action de Formedon, enuers nul auter perſon, &c.

that foraſmuch as the Iſſue in taile came to the Freehold, and not by his Act, nor by his Agreement, but after the death of his Father, therefore this is a Remitter to him, inaſmuch as he cannot ſue an Action of *Formedon* againſt any other perſon, &c.

¶ This caſe ſtandeth upon the ſame reaſon that the next precedent caſe doth. ¶ *Mes celuy que eſt ioint Tenant, &c.* Here it appeareth, that Acts of Parliament are to be ſo conſtrued, as no man that is innocent or free from injury or wrong, be by a literal conſtruction puniſhed or endamaged: and therefore in this caſe albeit the letter of the Statute is generally to give dammages againſt him that is found Tenant, and the caſe that Littleton here putteth, D. being ſurvivor, is conſequently found tenant of the Land; yet becauſe he waived the Eſtate, and never agreed to the Feoffment, nor took any profits, he ſhall not be charged with the damages.

Sect. 686,687.

¶ Item, ſi vn Abbe aliena la tre de ſon meaſon a vn auter en fé, et Laliené p ſon fait charge la Terre oue vn rent charge en fé, & puis laliené infeoffa Labbe oue licence, a auer et ten al Abbe et a ſes ſucceſſors a touts iours, et puis Labbe moruſt, et vn auter eſt eſlieu, et fait Abbe: en ceſt caſe Labbe que eſt le ſucceſſor, et ſon Couent, ſont en lour Remitter, et tiendront la terre diſcharge, p ceo que meſme Labbe ne poit auer aſcun Action, ne Briefe Dentre ſine aſſenſu Capituli, de meſme la terre enuers nul auter perſon.

ALſo if an Abbot alien the land of his houſe to another in Fee, and the Alienee by his Deed charge the land with a Rent-charge in Fee, and after the Alienee infeoffe the Abbot with Licence, To have and to hold to the Abbot and to his Succeſſors for ever, and after the Abbot die, and another is choſen, and made Abbot: in this caſe the Abbot that is the ſucceſſor, and his Covent, are in their Remitter, and ſhall hold the land diſcharged, becauſe the ſame Abbot cannot have an action, nor a Writ of *Entre ſine aſſenſu Capituli*, of the ſame Land, againſt any other perſon.

Sect. 687.

¶ En meſme le maner eſt, lou vn Eueſque, ou vn Deane, ou auters tiels Perſons aliena, &c. ſans aſſent, &c. et Laliené charge la terre, &c. et puis Leueſque repriſt eſtate de meſme la Terre per Licence, a luy et a ſes Suc-

IN the ſame manner it is, where a Biſhop or a Dean, or other ſuch perſons alien, &c. without aſſent, &c. and the Alienee charge the land, &c. and after the Biſhop takes back an eſtate of the ſame land by Licence, to him and his Succeſ-

Successors, et puis Leuesque deuie, son Successor est en son Remitter, come en droit de son Eglise, et defeatera le charge, &c. Causa qua supra, &c.

fours, and after the Bishop dieth; his Successor is in his Remitter as in right of his Church, and shall defeat the Charge, &c. *Causa qua supra.*

¶ Our Author having spoken of Remitters to singular or natural persons, as Issues in Taile, and to Feme Coverts, and to their Heires, and to them in Reversion or Remainder, and their Heires; now he speaketh of Remitters to Bodies politike and incorporate, as to Abbots, Bishops, Deanes, &c. And as Discents do remit the heire which comes in the Per, so succession doth remit the Successor, albeit he cometh in the Post. And so in other cases where the Issue in Tail of full age shall be remitted, there in the like case shall the Successor be remitted also, and defeat all mean charges and incumbrances.

¶ *One Licence, &c.* That is, of the King and the Lords immediate and mediate, to dispence with the Statutes of Mortmaine, whereof see more before, Sect. 140.

Sect. 688.

¶ Item, si home suist faux action enuers le Tenant en Taile, si come home voile suer enuers luy vn Briefe Dentre en le Post, supposant per ſ brieſe que le tenant en taile nad pas entre, sinon per A. de B. que disseisist layel le Demandant, & ceo est faux, et il recouer enuers le Tenant en le Taile per default, et suist execution, et puis l'Tenant en taile mozust, son Issue poit auer Briefe de Formedon enuers luy que recouera, & sil voile pleader le recouerie enuers le Tenant en taile, l'Issue poit dire, que le dit A. de B. ne disseisist poynt layel celuy que recouerast, en le maner come son Briefe suppoſa, & illint il saurera le recouerie. Auxy posito, que ceo fuit voyer, que le dit A. de B. disseisist layel le demandant que recouerast, et que apres le disseisin le Demandant, ou son pier, ou son ayel per vn fait auoyent releſſe al tenant en Taile, tout le droit que il auoit en la Terre, &c. & ceo nient contrestant

ALso if a man sue a false Action against Tenant in Taile, as if one will sue against him a Writ of Entry in the *Post*, supposing by his Writ, That the Tenant in Taile had not his entry, but by A. of B. who disseised the Grandfather of the Demandant, and this is false, and he recovereth against the Tenant in Taile by default, and sueth Execution, and after the Tenant in Taile dieth, his Issue may have a Writ of *Formedon* against him which recovereth, and if he will plead the Recovery against the Tenant in taile, the Issue may say, That the said A. of B. did not disseise the Grandfather of him which recovered in māner as his writ suppose, and so he shall falsifie his recovery. And admit this were true, That the said A. of B. did disseise the Grandfather of the Demandant which recovered, and that after the disseisin, the Demandant, or his Father, or his Grandfather by a deed had released to the Tenant in Taile all the right which he had in the

ant il ſuiſt vn Briefe Dentre en le Poſt enuers le Tenant en Taile, en le manner come eſt auantdit, & le Tenaunt en Taile pleda a celuy, Que le dit A. de B. ne diſſeiſiſt pas ſon ayel, en le manner come ſon Briefe ſuppoſa, & ſur ceo ſont a Iſſue, & liſſue eſt troue pur le Demandant, per que il ad iudgement de recouer, & ſuiſt execution, & puis le Tenant en le Taile mozuſt, ſon Iſſue poit auſ vn Briefe de Formedon enuers celuy que recouera, & ſil voile plead le recouerie per laction trie enuers ſon pier, que fuit Tenant en Taile, donque il poit monſtrer & pleader le Releaſe fait al ſon pier, & iſſint laction que fuit ſue, feint en Ley.

land, &c. and notwithſtanding this he ſueth a Writ of Entrie in the *Poſt*, againſt the Tenant in Taile, in manner as is aforeſaid, and the Tenant in Taile plead to him, That the ſaid A. of B. did not diſſeiſe his Grandfather, in ſuch manner as his Writ ſuppoſe, and upon this they are at Iſſue, and the Iſſue is found for the demandant, wherby he hath judgement to recover, & ſueth execution, & after the Tenant in Taile dieth, his Iſſue may have a Writ of *Formedon* againſt him that recovered, and if he will plead the recovery by the Action tried againſt his father who was Tenant in taile, then he may ſhew and plead the Releaſe made to his father, and ſo the Action which was ſued, feint in Law.

IL *recouera enuers le tenant en taile per default.* Litt. addeth (by default) becauſe if the (c) recovery paſſed upon an iſſue tried by verdict, he ſhall never falſifie in the point tried, becauſe an attaint might have been had againſt the Jurors, and albeit all the Jurors be dead, ſo as the attaint do fail, yet the iſſue in taile ſhall not falſifie in the point tried, which, until it be lawfully avoided, pro veritate accipitur. As if the Tenant in taile be impleaded in a Formedon, and he traverſeth the gift, and it is tried againſt him, and thereupon the Demandant recover. In this caſe the iſſue in taile ſhall not falſifie in the point tried, but he may falſifie the recovery by any other matter: as that the Tenant in taile might have pleaded a collateral warrantie, or a Releaſe, as Littleton here putteth the caſe, or to confeſs and avoid the point tried. And Littletons caſe holdeth not only in a recovery by default, whereof he ſpeaketh, but alſo upon a nihil dicit, or Confeſſion or Demurrer.

(c) 12 E.4.19. 13 E.4.3 11 H.4.89. 7 H.4.17. 14 H.7.10, 11.28 Aſſ.32 32.34 Aſſ.7.10 H.6.5. 19 H.6.39. Brooke tit. Fauxifier de Recouerie. 55. 22 H.6.28. 34 H.6. 2.26 H.6.32.36 H.6. Fauxer de Recouerie. 27.

Sect. 689.

ET il ſemble que feint action eſt autant adire & Engliſh, a fained action, ceſtaſcauoir, tiel action, que coment que les paroir de le briefe ſont voyers, vncore pur certaine cauſes il nad cauſe ne title per la ley de recouer pur meſme laction. Et faux action eſt, lou les paroir de briefe ſont faux. Et en les deux caſes auantdits, ſi le cas fuit tiel, que apres tiel recouery & execution ent

AND it ſeemeth that a faint action is aſmuch to ſay in Engliſh, *a fained action*, that is to ſay ſuch an Action as albeit the words of the Writ be true, yet for certaine cauſes he hath no cauſe nor title by the Law to recover by the ſame action. And a falſe action is, where the words of the Writ be falſe. And in theſe two Caſes aforeſaid, if the caſe were ſuch that after ſuch recovery, and execution

ent fait, le tenant en taile dit diſſeiſie celuy que recouera, & ent moruſt ſeiſie, per que la terre diſcendiſt a ſon iſſue, ceo eſt vn remitter al iſſue, & iſſue eſt eins per force de le taile, & pur cel cauſe ieo aye mis les deux caſes precedents, pur enformer toy, mon fits, que iſſue en taile per force dun diſcent fait a luy apres vn recouery & execution fait enuers ſon auncеſter poit eſtre auxy bien en ſon remitter ſicome il ſerroit per le diſcent fait a luy apres vn diſcontinuance fait per ſon auncеſter de les terres tailes, per feoffement en pais, ou autrement, &c.

thereupon done the tenant in tayle had diſſeiſed him that recovered, and thereof died ſeiſed, whereby the Land deſcended to his iſſue, this is a Remitter to the iſſue, and the iſſue is in by force of the taile, and for this cauſe I have put theſe two caſes precedent, to enforme thee (my Sonne) that the iſſue in taile by force of a diſcent made unto him after a recovery and Execution made againſt his Anceſtour, may be as well in his remitter, as he ſhould be by the diſcent made to him after a Diſcontinuance made by his Anceſtour of the entailed lands by feoffement in the Country or otherwiſe, &c.

HEre Littleton explaineth what a faint action is, and what a falſe action is, which is, plain and perſpicuous. And here it is to be obſerved, that a Remitter may be had after a recovery upon a faint action by a diſſeiſin and a diſcent as well as by a diſcent after a diſcontinuance by a feoffement, &c.

Sect. 690.

28 Aſſ. 38. 34 Aſſ. Pl. 7. 35 E. 3 Age 95. 11 H. 4. 89 7 H. 4. 17. 33 E. 3. Entr. cong. 28. 21 H. 6. 13. 10 H. 6. 12. 4. 20. 14 H. 7. 11. 23. Eliz. Dier. 276. no. 1. fol. 106. Shelleys caſe. Pl. Com. 55.

HEre it appeareth, that if a judgement be given againſt a tenant in taile upon a faint or falſe action, and Tenant in taile die before execution, no execution can be ſued againſt the iſſue in taile. But if in a common recovery judgement be had againſt Tenant in taile where he voucheth, and hath judgement to recover over in value, albeit the Tenant in Tayle dyeth before execution, yet the recoveror ſhall execute the judgement againſt the iſſue in taile in reſpect of the intended recompence, and for that it is the common aſſurance of the Realme, and is well warranted (d) by our Bookes, and was not invented by Juſtice Choke, who was a grave and learned Judge in the time of E. 4. (as ſome hold by tradition) but it may be

See hereafter Sect. 709. 15 E. 3. Brieſe 324. 42 E. 3. 53 44 E. 3 21. 48 E. 3. 11. 1 E. 4. 5. 5 E. 4. 2.

(d) 12 E. 4. 10. Dier 23. Eliz. 376. lib. 10. fol. 37. 38. In Mary Portingtons Caſe.

ITem, & les caſes auantdits, ſi le cas ſuit tiel, que apres ceo que le demãdant auoit iudgement de recouer enuers l'tenant en taile, & meſme le tenant en taile moruſt deuaunt aſcun execution ewe enuers luy p que les tenements diſcendõt a ſon iſſue, & celuy que recouera ſuiſt vn Scire facias, hors de le iudgement dauer execution de le iudgement enuers iſſue en taile, iſſue piedera le matter

ALſo in the caſes aforeſaid, if the caſe were ſuch, that after that the Demandant have judgement to recover againſt the Tenant in tayle, and the ſame Tenant in tayle dieth before any executiõ had againſt him, whereby the Teneméts deſcend to his iſſue, & he who recovereth ſueth a *Scire facias* out of the judgement to have execution of the judgement againſt the iſſue in taile, the iſſue ſhall plead the matter as aforeſaid, and ſo

matter come auant ceſt dit: Et iſſint prouua que l' dit recouery fuit faux, ou feint en ley, & iſſunt luy barrera dauer execution de le iudgement.

proove that the ſaid recovery was falſe or faint in Law, and ſo ſhall barre him to have execution of the judgement.

that it was upon former Authorities and opinions of Judges diſcovered by him, aſſented unto by the reſt of the Judges.

If a recovery be had againſt Tenant for life without conſent or Covine, though it be without title, and Execution be had, and Tenant for life dieth, the reverſion or remainder is diſcontinued, ſo as he in the reverſion or remainder cannot enter, but if ſuch a recovery be had by agreement and Covine between the Demandant and the Tenant for life, then, as hath been ſaid, it is a forfeiture of the eſtate for life, and he in the reverſion or remainder may enter for the forfeiture: So it is if the Tenant for life ſuffer a common recovery at this day, it is a forfeiture of his eſtate, for a common recovery is a common conveyance or aſſurance, whereof the Law taketh knowledge. Since Littleton wrote there were two Statutes (e) made for preſervation of Remainders and Reverſions expectant upon any manner of eſtate for life, the one in 32 H.8. the other in 14 Eliz. but 32 H. 8. extended not to recoveries, when Tenant for life came in as Vouchee, &c. and therefore that act is repealed by 14 Eliz. and full remedy provided for preſervation of the entry of them in reverſion or remainder. But the Statute of 14 Eliz. extendeth not to any recovery, unleſs it be by agreement or Covine. Secondly, (f) if there be Tenant for life, Remainder in taile, the reverſion or remainder in fee, if Tenant for life be impleaded by agreement, and he vouch Tenant in taile, and he vouch over the common Vouchee, this ſhall barre the Reverſion or Remainder in fee, although he in the reverſion or remainder did never aſſent to the recovery, becauſe it was not the intent of the act to extend to ſuch a recovery, in which a Tenant in taile was vouched, for he hath power by common recovery, if he were in poſſeſſion, to cut off all reverſions and remainders. And ſo if Tenant for life had ſurrendred to him in Remainder in taile, he might have barred the remainders and reverſions expectant upon his eſtate. Thirdly, where the proviſo of that act ſpeaketh of an aſſent of Record by him in reverſion or remainder, it is to be underſtood, that ſuch aſſent muſt appear upon the ſame Record either upon a Voucher, Aid prier, receit, or the like, for it cannot appear of Record, unleſs it be done in courſe of Law, and not by any extrajudicial entry, or by Memorandum.

5 Aſſ 3 5 E 3. entre. Cong. 42. li. 1. fol 15, 16. Sir William Pelhams caſe

(e) 32 H 8. cap. 36. 14 Eliz. cap. 8.

(f) Lib. 3. fol 60, 61. Lincolne College caſe.

Sect. 691.

¶ Item, ſi tenant en taile diſcontinua le taile, et morust, et ſon iſſue port ſoit briefe d' Formedon enuers le diſcontinuee (eſteant tenant de franktenement del terre) et le diſcontinuee pleda q' il nest tenant, mes outterment diſclaima de le tenancy en la terre, en ceſt cas le iudgement ſerra, que le tenant alaſt ſans iour, et apres tiel

ALſo if Tenant in taile diſcontinue the taile, and dieth, and his iſſue bringeth his writ of *Formedon* againſt the diſcõtinuee (being tenant of the freehold of the Land) and the Diſcontinuee plead that he is not tenant, but utterly diſclaimeth from the tenancy in the land. In this caſe the judgement ſhall be that the Tenant goeth without day, and after ſuch

¶ HEre it appeareth that upon the plea of non-tenure, or a diſclaimer of the tenant in a Formedon in the Diſcender, albeit the expreſs judgement be that the tenant ſhall go without day, yet in judgement of Law the Demandant may enter according to the title of his writ, and be ſeiſed in tayle notwithſtanding the Diſcontinuance. And here Littleton ſaith the Demandant ſhall be adjudged in his Remitter, where he taketh Remitter in a large ſenſe, for in this caſe the Demandant hath not two rights, but hath only one antient right, and is reſtored to the ſame by courſe of Law, and ſo Remitter here is taken for a recontinuance of the right.

5 E. 4. 1. 36 H. 6. 29. 6 E. 3. 8. 4 E. 4. 38.

Non-tenure. Vide Bracton. lib. 5. fol. 431, 432. & 414. Britton. cap. 84.

¶ *Où le demandant ne recouera damages.* Here is to be obſerued that in ſuch a Præcipe where the Demandant is to recouer dammages, & the Tenant pleade non-tenure or diſclaime, (f) there the Demandant may averre him to be tenant of the land, as his writ ſuppoſe for the benefit of his damages, which otherwiſe he ſhould loſe, or pray iudgement and enter. (g) But where no damages are to be recouered, as in a Formedon in the Diſcender, and the like, there he cannot averre him Tenant, but pray his Iudgement and enter, for thereby he hath the effect of his ſuite Et fruſtrà fit per plura, quod fieri poteſt per pauciora.

(f) 13 H.7.18.36 H.6. 29.22 H.6.44.4 E.4 38. 5 E.4.1.6 E.3.8.

(g) 8 E.3.434. 24 E.3.9. 11 H.4.26.& 7.H.6.17.

5 E.4.1.

¶ *Auerrer.* To averre or avouch, or verifie, verificare, whereof commeth verificatio an averment, and is ſo ſaid as well in Engliſh as in French. And is twofold, viz. general and particular. A general averment, which is the concluſion of every plea to the writ, or in barre of replications and other pleadings (for Counts or Avowries in nature of Counts need not be averred) containing matter affirmative, ought to be averred, & hoc paratus eſt verificare, &c. Particular averments are, as when the life of Tenant for life, or Tenant in taile are averred, and there, though this word (verificare) be not uſed, but the matter avouched and affirmed, it is upon the matter an averment. And an averment containeth as well the matter as the form thereof.

¶ *Que le tenant alaſt ſans iour.* Quod tenens eat ſine die. This is the entrie of the iudgement in that caſe, that the Tenant ſhall go without day, that is to be diſcharged of further attendance, and this is ſome-

iudgement liſſue en le taile que eſt demandant poit entrer en la terre, nyent contriſteant le diſcontinuance, & per tiel entrie il ſerra adiudge eins en ſon Remitter. Et la cauſe eſt, pur ceo q̄ ſi aſcun home ſuiſt Præcipe quod reddat, enuers aſcun tenant de franktenement, en quel action l'demandant ne recouera damages, et le tenant pledaſt nontenure, ou auterment diſclaima en le tenancie, le demandant ne poit averrer ſon briefe, & dirra q̄ il eſt tenant come le briefe ſuppoſe. Et pur cel cauſe l'demandant apres ceo que iudgement eſt done q̄ le tenant alaſt ſans iour, poit entrer ē les tenements demands, le quel ſerra auxy graund aduantage a luy en ley, ſicome il auoit iudgement de recouerer enuers le tenant, & per tiel entrie il eſt en ſon remitter per force del taile. Mes lou le demand recouera dammages enuers le tenant, la le demandant poit auerer, que il eſt tenant come le briefe ſupp, & ceo pur laduantage del

judgement the iſſue in the taile that is demandant may enter into the land, notwithſtanding the diſcontinuance, and by ſuch entrie he ſhall be adjudged in his Remitter. And the reaſon is, for that if any man ſue a *Præcipe quod reddat* againſt any tenant of the freehold in which action the demandant ſhall not recover damages, and the tenant pleads nontenure, or otherwiſe diſclaime in the tenancie, the Demandant cānot averre his writ, and ſay that he is tenant as the Writ ſuppoſeth. And for this cauſe the demādant after that that judgemēt is givē that the tenant ſhall go without day, may enter into the tenements demanded, the which ſhall be as great an advantage to him in law, as if he had judgement to recover againſt the tenant, and by ſuch entry he is in his remitter by force of the entaile. But where the demandant ſhall recover damages againſt the tenant, there the demandant may averre that he is tenant, as the Writ ſuppoſeth and that for the advan-

del demandant p̄ recouer ſes damages, ou autrement il ne recoueroit ſes damages, queux ſont ou fueront a luy dones per la Ley.

tage of the demandant to recover his dammages, or otherwiſe he ſhall not recover his dammages, which are or were given to him by the Law.

time ſhall for that action whereof Littleton here putteth an example, and ſometime tempozary, whereof Littleton also hath put an example, as when excommengement is pleaded in diſability of the Plaintiffe, oz Demandant, there the award is, that the Tenant oz Defendant ſhall go without day, and yet when the Demandant oz Plaintiffe have purchaſed his Letters of abſolution, upon ſhewing them to the Court, he may have a reſommons oz reattachment to recontinue the cauſe again. But it is to be known, that when judgement is given for the Tenant oz Defendant upon a Plea in barre, oz to the Writ, &c. the judgement is all one, viz. Quod tenens, oz defendens eat inde ſine die, and ſhall have reference to the nature and matter of the Plea, and ſo be taken either to go in barre, oz to the Writ. So when judgement is given againſt the Plaintiffe, either in barre of his Action, oz in abatement of his Writ, &c. the judgement is all one, viz. Nihil capiat per breve, and it appeareth by the Recozd, whether the Plea did go in barre, oz to the Writ. And the cauſe of the judgement is never entred in the Recozd in any caſe, for that upon conſideration had of the Recozd it appeareth therein. 2 H.4.2.11.

Sect. 692.

Item, ſi home ſoit diſſeiſie, & le diſſeiſoz deuy, ſon heire eſteant eins per diſcent, oze lentrie de le Diſſeiſee eſt tolle, & ſi le Diſſeiſee porta ſon briefe dentrie ſur diſſeiſin en le Per, enuers heire, & heire diſclaime en le tenancy, &c. le Demandant poit auerrer ſon briefe que il eſt Tenant come le Briefe ſuppoſe ſil voit, pur recouerer ſes damages, mes uncore ſil voit relinquiſher le auerment, &c. il poit loyalment entrer en la terre per cauſe del diſclaimer, nient obſtant que ſon entrie adeuant fuit tolle, & ceo fuit adiudge deuant mon maſter ſir R. Danby iades Chiefe Juſtice de la Common Banke & ſes compagnions, &c.

ALſo if a man be diſſeiſed, and the Diſſeiſor die his Heire being in by diſcent, now the entry of the Diſſeiſee is taken away, and if the Diſſeiſee bring his Writ of entry *Sur diſſeiſin* in the *Per* againſt the Heire, and the Heire diſclaim in the tenancy, &c. the Demanmandāt may averre his Writ that he is Tenant as the Writ ſuppoſe, if he will, to recover his dammages, but yet if he will relinquiſh the averment, &c. he may lawfully enter into the Land becauſe of the Diſclaimer, notwithſtanding that his Entry before was taken away, and this was adjudged before my Maſter Sir *R. Danby* late chiefe Juſtice of the Common Place and his Companions, &c.

Item, ſi home ſoit diſſeiſie, &c. Albeit in this caſe, and in the caſe before the Entrie of the Demandant is his own act, and the Demandant hath no expreſs judgement to recover, yet ſhall he be remitted, becauſe he in judgement of the Law ſhall be in according to the title of his Writ, and by his Entry defeat the Diſcontinuance, and conſequently is remitted to his antient eſtate. 36 H.6.fol.25.

Sir Robert Danby Knight, was a Gentleman of an ancient and faire deſcended family, and Chiefe Juſtice of the Court of Common Pleas, a grave, reverend and learned Judge, of 5 E.4.41. 4 E.4.31.

of whom our Author speaketh here with very great reverence, as you may perceive. And here is to be noted how necessary it is, after the example of our Author, to observe the judgements and resolutions of the Sages of the Law.

Sect. 693.

29 Ass.p.26. 43 Ass.p.3. 11 H 7.20. 3 H.6.19. 40 E.3 43.

HEre appeareth a diversity between a right of Entrie, and a right of Action; for if a man of full age having but a right of Action, taketh an Estate to him, he is not remitted: but where he hath a right of Entrie, and taketh an Estate, he by his Entrie is remitted, because his Entry is lawful. And if the Disseisor infeoffe the Disseisee and others, the Disseisee is remitted to the whole for his Entrie is lawful: otherwise it is if his Entrie were taken away.

¶ Item, lou lentry dun home est congeable, coment que il prent estate a luy quant il est de pleine age pur terme de vie, ou en taile, ou en fee, ceo est vn Remitter a luy, si tiel prisel de estate ne soit per fait indent, ou per matter de record, que concludera ou estoppera. Car si hõe soit disseisie, & repret estate de le Disseisor sans fait, ou per fait polle, ceo est vn remit al Disseisee, &c.

ALso where the Entry of a man is congeable, although that he takes an estate to him when he is of full age, for term of life, or in Taile, or in Fee, this is a Remitter to him, if such taking of the estate be not by Deed indented, or by matter of Record, which shall conclude or estop him: for if a man be disseised, and takes back an Estate from the Disseisor without Deed, or by deed poll, this is a Remitter to the Disseisee, &c.

8 R.2.Quar. im.199. 19 H.6.30.8 H. 6.17. 21 H.6.2. 3 H.4 8. 14 H.6.15, 16.17 H 6.8 26 H.8.4.F.N.B 36.tol. & 35.b.

¶ *Lou l'entrie est congeable.* A. is disseised of a Mannor, whereunto an Advowson is appendant, an Estranger usurpe to the Advowson, if the Disseisee enter into the Mannor, the Advowson is recontinued againe, which was severed by the usurpation. And so it is if Tenant in Tayle be of a Mannor, whereunto an Advowson is appendant, the Tenant in Taile discontinueth in Fee, the Discontinuee granteth away the Advowson in Fee, and dieth, the Issue in Tayle recontinueth the Mannor by recovery, he is thereby remitted to the Advowson, and in both cases he that right hath shall present when the Church becometh void.

22 Ass.p.33. en le case de Theobald Grimuile.

The Patron of a Benefice is outlawed, and the Church becometh void, an Estranger usurpeth, and six moneths pass, the King doth recover in a Quare impedit, and remove the Incumbent, &c. the Advowson is recontinued to the rightful Patron. And so note a diversity between a Recontinuance and a Remitter; for a Remitter cannot be properly, unless there be two titles, but a recontinuance may be where there is but one.

33 H.4.5. 3 H.4.17. 8 rl.4.8. 12 H.4.19. 35 Ass.8.17 Ass.3. 29 Ass.53.43 E.3.17. Parkers case. 44 E.3. Estop.10. 21 H.6.2.per Paston,8 H.6.17.per Cotilmere.

¶ *Per fait indent, &c.* Here it appeareth, That if the Disseisor by Deed indented make a Lease for life, or a gift in Taile, or a Feoffment in fee, whereunto Livery of Seisin is requisite, yet the Deed indented shall not suffer the Livery made according to the form and effect of the Indenture, to work any Remitter to the Disseisee, but shall estop the Disseisee to claim his former estate: and if the Disseisor upon the Feoffment doth reserve any rent or condition, &c. the rent or condition is good: and the reason wherefore a Deed indented shall conclude the taker more than the Deed poll, is for that the Deed poll is only the Deed of the Feoffor, Donor, and Lessor, but the Deed indented is the Deed of both Parties, and therefore as well the taker as the giver is concluded.

¶ *Ou per Record.* As by Fine, Deed indented, and inrolled, and the like.

Sect.

Sect. 694.

¶ Item, [ſi home leſſa terre pur terme de vie a vn auter, le quel aliena a vn auter en fee, & laliena fait eſtate a le Leſſor, ceo eſt vn Remitter al Leſſor, pur ceo que ſon Entrie fuit congeable, &c.

ALſo if a man let land for term of life to another, who alieneth to another in Fee, and the Alienee make an Eſtate to the Leſſor, this is a Remitter to the Leſſor, becauſe his Entrie was congeable, &c.

This is evident enough upon that which hath been ſaid.

Sect. 695.

¶ Item, ſi home ſoit diſſeiſie, & le Diſſeiſor leſſa la terre al diſſeiſe per fait pol, ou ſans fait pur terme des ans, per que le diſſeiſe entra, ceſt entre eſt vn Remitter a le diſſeiſe. Car en tiel caſe lou lentre dun home eſt congeable & vn Leaſe eſt fait a luy, coment que il claima p parolx en pais, que il ad eſtate per force de tiel leaſe, ou dit ouertment que il ne claima riens en la terre ſinon per force de tiel Leaſe, vncore ceo eſt vn remitter a luy, car tiel diſclaimer en le pais neſt riens a purpoſe. Mes ſil diſclaimer en court de Record que il nad eſtate forſque per force de tiel Leaſe, & nemy autrement, donqs il eſt conclude, &c.

ALſo if a man be diſſeiſed, and the Diſſeiſor let the Land to the Diſſeiſee by Deed pol, or without Deed, for term of years, by which the Diſſeiſee entreth, this entrie is a Remitter to the Diſſeiſee. For in ſuch caſe where the Entry of a man is congeable, and a Leaſe is made to him, albeit that he claimeth by words in *Pais*, that he hath eſtate by force of ſuch Leaſe, or ſaith openly, That he claimeth nothing in the Land but by force of ſuch Leaſe, yet this is a Remitter to him, for that ſuch diſclaimer in *Pais* is nothing to the purpoſe. But if he diſclaime in Court of Record, that he hath no eſtate but by force of ſuch Leaſe, and not otherwiſe, then is he concluded, &c.

¶ Here appeareth a Diverſity between a Claime in Pais of an Eſtate, and a Claim of Record, for a Claime in Pais ſhall not hinder a Remitter. Otherwiſe it is of a Claime of Record, becauſe that doth worke a Concluſion.

Sect. 696.

¶ Item, ſi deux Joyntenaunts ſeiſie de certeine tenements en Fee, lun

ALſo if two Joyntenants ſeiſed of certain Tenements in Fee, the one being of

¶ Here note a Diverſity worthy the obſervation, that where Joyntenants or Coparceners have one and the ſame remedy, if the one enter, the

the other ſhall enter alſo: but where remedies be ſeveral, there it is otherwiſe. As if two Joyntenants or Coparceners joyn in a real Action, where their entrie is not lawful, and the one is ſummoned and severed, and the other purſueth and recovereth the moity, the other Joyntenant or Coparcener ſhall enter, and take the profits with her, becauſe their remedie was one and the ſame. But where two Coparceners be, and they are diſſeiſed, and a Diſcent is caſt, and they have iſſue and die, if the Iſſue of the one recover her moity, the other ſhall not enter with her, becauſe their remedies were ſeveral, and yet when both have recovered, they are Coparceners again. So here in this Caſe that Littleton putteth, the two Joyntenants have not equal remedie, for the Infant hath a right of Entrie, and the other a right of Action; and therefore the Infant being remitted to a moity, the other ſhall not enter and take the profits with her.

10 H. 6 10. 19 H. 6 47. 3 H. 6. tit. Ent. cong. 54.

If A. and B. Joyntenants in Fee, be diſſeiſed by the father of A. who dieth ſeiſed his ſonne and heire entreth, he is remitted to the whole, and his Companion ſhall take advantage thereof. Otherwiſe herein the Caſe of Littleton, for that the advantage is given to the Infant, more in reſpect of his perſon, than of his right, whereof his Companion ſhall take no advantage. But if the Grandfather had diſſeiſed the Joyntenants, and the Land had deſcended to the Father, and from him to A. and then A. had died, the Entrie of the other ſhould be taken away by the firſt Diſcent, and therefore he ſhould not enter with the Heir of A.

Vide 38 Aſſ. Pl. Vlim.

But here in the caſe of Littleton, if after the Diſcent the other Joyntenant had died, and the Infant ſurvived, ſome ſay that he ſhould have entred into the whole, becauſe he is now in judgement of Law, ſolely in by the firſt Feoffment, and he claimeth not under the Diſcent.

Chap. 13. Of VVarrantie. Sect. 697

Il eſt communement dit. Here by the opinion of Littleton, Communis opinio is of authority, & ſtands with the rule of Law, A communi obſervantia non eſt recedendum.

Vide Sect. 288. 331.

Il eſt cõmunement dit, Que trois Garranties y ſont, ſ. Garrantie lineal, Garrantie collateral, & Garrantie commen. Et ſur ceo il eſt a ſcaver, que Garrantie eſt, & en quel cas un home poit voucher, & en quel cas non.

IT is commonly ſaid, that there be three Warranties, *ſcilicet*, Warrantie Lineall, Warrantie Co-

rantie collateral, et Garrantie q̄ cōmence p̄ diſſeiſin. Et eſt aſcauoir, que deuant leſtatute de Glouc, touts Garranties queux diſcendont a eux queux ſont heires a eux q̄ ſeſoyēt les Garranties, ſueront barres a meſmes les heires a demander aſcuns terres ou tenements encounter les Garranties, ſoyent ile les garrāties q̄ commencerent p̄ diſſeiſin, car tiel Garrantie ne fuitbnque barre al heire, pur ceo que le Garrantie commence per tort, ſ. per diſſeiſin.

lateral, and Warrantie that commence by diſſeiſin. And it is to be underſtood, that before the Statute of Glouc', all Warranties which deſcended to them which are heires to thoſe who made the Warranties, were barres to the ſame heires to demand any Lands or Tenements againſt the Warranties, except the Warranties which commence by diſſeiſin. For ſuch warrantie was no barre to the heire, for that the Warrantie commenced by wrong, *viz.* by diſſeiſin,

dendum: and againe, Minimè mutanda ſunt quæ certam habuerunt interpretationem.

Here our Author beginneth this Chapter with an exact diuiſion of Warranties. A Warrantie is a Couenant real annexed to Lands or Tenements whereby a man and his heires are bound to warrant the ſame, and either upon voucher, or by iudgement in a Writ of Warrantia cartæ to yeild other lands and tenements (which in old Bookes is called in excambio) to the value of thoſe that ſhall be euicted by a former Title, or elſe may be tiled by way of Rebutter. Bract. lib. 2. fol. 37. lib. 5. fol. 380, 381, &c. Glanvil. lib. 3. cap. 1, 2, 3. lib. 7. cap. 2, 3. lib. 9. ca. 4. Britton. ca. 105. fol. 249, 250. &c. & fol. 88 106. b. 196, 197. Fleta lib. 5. cap. 15. Lib. 6. cap. 23. Mirr. cap. 2. Sect. 17. 38 E. 3. 21. 45 E. 3. 18.

¶ *Rebouter* is a French word, and is in Latine repellere, to repell or barre, that is in the vnderſtanding of the Common Law, the action of the heire by the Warrantie of his Anceſtor, and this is called to Rebut or repell. (c) Britton ſaith, Garranter en vn ſence ſignifie a defender ſon tenant en ſa ſeiſin, & en auter ſence ſignifie que ſi il ne defende que le garrant luy ſoit tenue a eſchanges, & de faire ſon gree a la vaillaunce. (d) Bracton ſaith, Warrantizare nihil aliud eſt, quam defendere & acquietare tenentem qui Warrantum vocavit in ſeiſina ſua. (e) Fleta ſaith, Warrantizare nihil aliud eſt quam poſſidentem vocantem defendere & acquietare in ſua ſeiſin a vel poſſeſſione erga petentem, &c. & tenens de re Warranti excambium habebit ad Valentiam. (c) Britton. fol. 197. b. (d) Bract. lib. 5. fol. 380. (e) Fleta lib. 5. cap. 15.

It is to be obſerued that there be two kind of Warranties, that is to ſay, Warrantia expreſſa, & tacita, vulgarly ſaid warranty in deed, becauſe they be expreſſed, and warranties in Law, becauſe the Law doth tacitely imply them. And this diuiſion of Warranties that Littleton here ſpeaketh of, he intendeth of Warranties in deed. And of Warranties in Law more ſhall be ſaid hereafter in this Chapter. As for promiſes or Contracts annexed to Chattels real or perſonal, they are not intended by our Author in his ſaid diuiſion, but only Warranties concerning Freholds and Inheritances. Lib. 4. fol. 81. Nokes caſe. Vid. Sect. 733.

¶ *Deuant le ſtatute de Glouc.* This Statute was made at a Parliament holden at Gloceſter in the ſixth year of the raign of King E. 1. and therefore it is called the Statute of Gloceſter. Glouc. cap. 3. Vid. Sect. 724, 725. & 727 &c.

¶ *Sont barres a meſmes les heires a demander aſcuns terres, &c.* or the Statute, as hath been ſaid, being made in 6. E. 1. (was before the Statute of Donis conditionalibus which was enacted 13. Edward 1.) when all ſtates of Inheritance were fee ſimple. But after the Statute of 13. Edward 1. the heir in tayle is not barred by the Warrantie of his Anceſtour unleſs there be Aſſets, as ſhall be ſaid hereafter more largely in this Chapter. Bracton lib. 4. fol. 321. b. Fleta lib. 5. cap. 34. 7 E. 3. Garr. 47.

By the Statute of Gloceſter four things are enacted.

Firſt, that if a Tenant by the courteſie alien with Warranty and dieth, that this ſhall be no barre to the heir in a Writ of Mordanceſter without Aſſets in fee ſimple. And if Lands or Tenements deſcend to the heir from the father, he ſhall be barred having regard to the value thereof.

Secondly, That if the heir, for want of Assets at that time descended, doth recover the lands of his Mother by force of this Act, and afterwards Assets descend to the heire from the father, then the Tenant shall recover against the heir the Inheritance of the mother by a Writ or Judgement, which shall issue out of the Record, to resummon him that ought to warrant, as it hath been done in other Cases, where the heir being vouched commeth into the Court, and pleades that he hath nothing by discent.

Thirdly, That the issue of the sonne shall recover by a Writ of Cosinage, Aiel and Besaiel.

And lastly, that the heire of the wife after the death of the father and mother shall be barred of his Action to demand the Heritage of the mother by Writ of Entrie, which his father alened in the time of his mother, whereof no fine was levied in the Kings Court.

Concerning the first, there be two points in Law to be observed.

(c) 11 E.3.tit. Garr.83. 4.E.3.Garr.83.18.E 3. 51. PlCom.116. 7 E.3. 53. Temps E.1.Garr.57.

First, Albeit the Statute in this Article name a Writ of Mordancester, and after Writs of Cosinage, Aiell and Besaiel (c) yet a Writ of Right, a Formedon, a Writ of Entry Ad Communem Legem, and all other like Actions are within the purview of this Statute, for those Actions are put but for examples.

27 E.3.89.14E.4.Gar.5. Dier quarto Mar. 148. n.

Secondly, where it is said in the said Act, (if the Tenant by the courtesie alien) yet his release with warrantie to a Disseisor, &c. is within the purview of the Statute, for that it is in equal mischiefe, and if that evasion might take place, the Statute should have bin made in vaine.

22 Ass.9.& 37. Temps E.1.Gar.86. (o) 11 H.7.cap.20, 18 E. 3.9.

If Tenant by the courtesie do of a Seigniorie, and the Tenancy escheats unto him, and after he alieneth with warranty, this shall not binde the issue, unless Assets descend, for it is in equal mischief. But notwithstanding this Statute, if Feme tenant in Dower had alened in fee with warranty and died, the warranty had bound the heir until the Statute (o) of 11.H.7. since our Author wrote. By which Statute the heire may enter notwithstanding such warranty.

But note there is a diversity betwixt a warranty on the part of the mother, and an estoppel. For an estoppel of the part of the mother shall not binde the heir, when he claimeth from the father. As if Lands be given to the husband and wife; and to the heires of the husband, the husband make a gift in taile, and dieth, the wife recovereth in a Cui in vita against the Donee, supposing that she had fee simple, and make a feoffement and dyeth, the Donee dyeth without issue, the issue of the husband and wife bring a Formedon in the Reverter against the Feoffee, and notwithstanding that he was heir to the Estoppel, and the mother was estopped, yet for that he claimed the Land as heir to his father, he was not estopped. Note, that warranties are favoured in Law, being part of a mans assurance, but estoppels are odious.

21 R.2. Judgement. 263.

If a feme heir of a Disseisor infeoffeth me with warranty, and marrieth with the Disseisee, if after the Disseisee bring a Præcipe against me, I shall rebut him, in respect of the warrantie of his wife, and yet he demandeth the Land in another right. And so if the husband and wife demand the right of the wife, a Warranty of the collateral Ancestor of the husband shall barre.

11 H.7.cap.20. Vid.Sect.595. See this Statute of 11 H.7.ca.20. well expounded. Lib. 1. fol.176.in Sir Anthon. Mildmayes Case.3.& 4. Ph.& Mar.Dier.146. Lib.3.fol.59,60,61,62. Lincolne Coll.Case.Pl. Com. fol.56. 20 Eliz. Dier 362. Doct. & Student.55.8 Eliz.Dier 248 19 Eliz.Dier 354.21 Eliz. ibid.362.lib.3.fol.59,51. Sir George Browns case. Lib.5.fol.79. Fitzh.Case. 27 H.8.23.

If a woman had been Tenant for life, the remainder or reversion to her next heir, and the woman had alened in fee and died, this warranty had barred her heir in remainder or Reversion, but this is partly holpen by the said Act of 11 H. 7. viz. where the woman hath any estate for life of the Inheritance or Purchase of her husband, or given to her by any of the Ancestors of the husband, or by any other person seised to the use of her husband or of any of his Ancestors, there her Alienation, Release, or Confirmation with warranty shall not bind the heir.

To the authorities quoted in the margent which may serve as Commentaries upon the said Statute, I will only adde two cases, the one was: (f) A man seised of Lands in fee levied a fine to the use of himself for life, and after to the use of his wife, and of the heires males of her body by him begotten for her Joynture, and had issue male, and after he and his wife levied a fine, and suffered a common recovery, the husband and wife died, and the issue male entred by force of the said Statute of 11 H. 7. And it was holden by the Justices of Assise (the case comming down to be tryed by Nisi prius) that the entry of the issue male was lawfull, and yet this case is out of the Letter of the Statute, for she neither levied the fine, &c. being sole, or with any other after taken husband, but is by her self with her husband that made the Joynture. Sed qui hæret in litera hæret in cortice, and this case being in the same mischiefe is therefore within the remedy of the Statute by the intendment of the makers of the same to avoid the disherison of heirs who were provided for by the said Joynture, and especially by the husband himself that made the Joynture, which (as it was said) is a stronger case than the example set down in the Statute. The other was, (g) A man is seised of Lands

(c) Mich.13 Jac. inter Harley & West in ejectione firme in Communi Banco, Lincoln.

(g) Pasch.17 Eliz. in

Lands in the right of his Wife, and they two levie a fine, and the Conuſee grant and render the Land to the Husband and Wife in ſpecial tayle, the remainder to the right heires of the Wife, they have iſſue, the Husband dyeth, the Wife taketh another Husband, and they two levie a fine in Fee, and the iſſue entereth, this is directly within the Letter of the Statute, and yet it is out of the meaning, becauſe the ſtate of the Land moved from the Wife, ſo as it was the purchaſe of the Husband in letter, and not in meaning. But where the woman is Tenant for life, by the gift or conveyance of any other, her alienation with Warranty ſhall bind the heir at this day. So if a man be Tenant for life (otherwiſe than as Tenant by the courteſie) and alien in fee with Warranty, and dieth, this ſhall at this day bind the heir, that hath the Reverſion or Remainder by the Common Law not holpen by any Statute. But all this is to be underſtood, unleſs the heir that hath the Reverſion or Remainder doth avoid the eſtate ſo alienedin the life of the Anceſtour, for then the eſtate being avoided, the warranty being annexed unto the eſtate, is avoided alſo, whereof more ſhall be ſaid in this Chapter in his proper place. And therefore it is neceſſary for the heire in ſuch caſes to make an entry as ſoon as he hath notice or probable ſuſpition of ſuch an alienation. Com. Banco Lattons Caſe, which I my ſelf heard and obſerved. Sect. 725.

As to the ſecond clauſe of the Statute of Glouceſter. There are two points of Law to be obſerved.

Firſt, That by the expreſs purview of the Statute, if Aſſets do after diſcend from the Father, then the Tenant ſhall have recovery or reſtitution of the Lands of the Mother. But in a Formedon if at the time of the Warranty pleaded no Aſſets be diſcended, whereby the Demandant recovereth, if after Aſſets diſcend, there the Tenant ſhall have a Scire facias for the Aſſets, and not for the Land intailed. And the reaſon hereof is, that if in this caſe the Tenant ſhould be reſtored to the Land intailed; then if the Iſſue in Taile alened the Aſſets, his Iſſue ſhould recover in a Formedon, and therefore the Sages of the Law, to prevent future occaſions of ſuits, reſolved the ſaid diverſity in the Caſes abovеſaid, upon conſideration and conſtruction of the Statute of Glouceſter, and of the Statute De donis conditionalibus. Pl.Com.Fulmerſtones caſe, 110 a. Lib.8.fol.53. Syms Caſe.

Secondly, It is to be obſerved, that after Aſſets diſcended, the recovery ſhall be by Writ of judgement, which ſhall iſſue out of the Rolle of the Juſtices, &c. And here two things are to be declared and explained. Firſt, by what writ, &c. and that is there, viz. by Scire facias. But the ſecond is more difficult, and that is upon what manner of judgement the Scire facias is to be grounded: for explanation whereof it is to be underſtood, that if the Tenant will have benefit of the Statute, he muſt plead the Warranty, and acknowledge the title of the demandant, and pray that the advantage of the Statute may be ſaved unto him. And then if after Aſſets diſcend, the Tenant upon this Record ſhall have a Scire facias. And if Aſſets diſcend but for part, he ſhall have a Scire facias for ſo much. But if the Tenant plead the warranty, and plead further that Aſſets diſcended, &c. and the demandant taketh iſſue that Aſſets diſcended not, &c. which iſſue is found for the Demandant, whereupon he recovereth the Tenant, albeit Aſſets do after diſcend, ſhall never have a Scire facias upon the ſaid Judgement, for that by his falſe plea he hath loſt the benefit of the ſaid Statute. Lib.8.fol.53,54. Syms caſe. Ibid. 134. Mary Shipleys Caſe.

Touching the third, ſufficient hath been ſpoken before. For the laſt, it is to be obſerved, That if the Husband be ſeiſed of Lands in the right of his Wife, and maketh a feoffement in fee with Warranty, the Wife dieth, and the Husband dieth, this Warranty ſhall not binde the heire of the Wife without Aſſets, albeit the Husband be not Tenant by the courteſie. But of this you ſhall read more hereafter. 8 E.2.tit.Gar.81. 18 E. 3.51.

In the mean time know this, that the learning of Warranties is one of the moſt curious and cunning Learnings of the Law, and of great uſe and conſequence. Vide Sect. 725.

¶ *A demander aſcuns terres ou tenements.* A Warranty may not only be annexed to Freholds, or Inheritances corporeal, which paſs by Livery, as Houſes and Lands, but alſo to Freholds or Inheritances incorporeal, which lye in grant as Bodowlans, and to Rents, Commons, Eſtouers, and the like, which iſſue out of Lands or Tenements. And not only to Inheritances in eſſe, but alſo to Rents, Commons, Eſtouers, &c. newly created. As a man (ſome ſay) may grant a Rent, &c. out of Land for life, in tayle, or in fee with Warranty, for although there can be no title precedent to the Rent, yet there may be a title precedent to the Land, out of which it iſſueth before the grant of the Rent, which Rent may be avoided by the recovery of the Land, in which caſe the Grantee may help himſelf by a Warrantia cartæ, upon the eſpecial matter. And ſo a Warrantie in Law may extend to a Rent, &c. newly created, and therefore if a Rent newly created be granted in Exchange for an Acre of Land, this Exchange is good, and every Exchange implyeth a Warranty in Law. And ſo a Rent newly created may be granted for owelties of partition. 2 H.4.13. 30 H. 8. Dier. 42. Temps E. 1. ad meſurement 16. 32 E. 1. Voucher. 294. 30 E.1. Exchange 16. 9 E.4. 15. E. 4.9. 29 Aſſ. 13.

Vide Sect. 741.
45 E.3. Voucher 72. 9 E. 3. 18 E. 3 55. 30 E. 3. 30. 21 H. 7. 9. 3 H. 7. 4. 7 H. 4. 17. 10 E. 4. 9 b. 21 E. 4. 26. 14 H. 8. 6. 30 H. 8. Dier. 42.

A man ſeiſed of a Rent ſeck iſſuing out of the Mannor of Dale, taketh a wife, the husband releaſeth to the Terre-tenant, and warranteth Tenementa prædicta, and dieth, the wife bringeth a writ of Dower of the Rent, the Terre-tenant ſhall vouch, for that albeit the releaſe enured by way of extinguiſhment, yet the Warrantie extended to it, and by warranting of the Land all Rents, &c. iſſuing out of the Land, that are ſuſpended or diſcharged at the time of the Warranty created, are warranted alſo.

Sect. 698.

¶ *Garranty que commence per diſſeiſin, &c.* It is called a Warranty that commenceth by Diſſeiſin, becauſe regularly the conveyance whereunto the Warranty is annexed doth worth a Diſſeiſin.

In this Section Littleton putteth five examples of a Warranty commencing by Diſſeiſin, viz. of a feoffement made with warranty by Tenant for yeers, by Tenant at will, by Tenant by Elegit, by tenant by Statute Merchant, and by tenant by Statute Staple: all theſe and the other examples that Littleton putteth of this kinde of Warranties in the ſucceeding Sections, have four qualities.

7 E. 3. 41. 43 E. 17. 50 E. 3. 12. Vid. Sect. 611.

Firſt, that the Diſſeiſin is done immediately to the heire that is to be bound, and yet if the Father be Tenant for life, the remainder to the ſonne in fee, the father by Covine and conſent maketh a Leaſe for yeares, to the end that the Leſſee ſhall make a feoffement in fee to whom the father ſhall releaſe with Warrantie, and all is executed accordingly, the father dyeth, this Warranty ſhall not binde, albeit the Diſſeiſin was not done immediately to the ſonne, for the feoffement of the Leſſee is a Diſſeiſin to the father, who is particeps criminis. So it is if one brother make a gift in tayle to another, and the uncle diſſeiſe the Donee, and infeoffeth another with Warrantie, the uncle dieth, and the Warrantie deſcendeth upon the Donor, and then the Donee dyeth without

Lib. 5 fol. 79. b. Fitzherberts Caſe.

31 E. 3. tit. Garrantie. 28

¶ Garranty q̃ cõmẽce per diſſeiſin en en tiel forme, ſicome lou il eſt pier et fits, et le fits purchaſe terre, &c. et leſſa meſme la terre a ſon pier pur terme dans, & pier per ſon fait ent enfeoffa vn auter en fee, & oblige luy & ſes heires a garranty, et le pier deuy, per que le garranty diſcendiſt al fits, ceo garranty ne barrera my le fits, car nient obſtant cel garrantie le fits poit bien enter en la terre, ou auer vn aſſiſe enuers laliené ſil voit, pur ceo que l' garrantie commence per diſſeiſin, car quant le pier que nauoit eſtate forſque pur terme des ans, fiſt vn feoffement en fee, ceo fuit vn diſſeiſin al fits del franktenement que adonq̃ fuiſt en le fits, En meſme le maner eſt, ſi le fits leſſa a le pier la terre a tener a volunt, & puis le pier fait vn feoffment que garrantie,

WArrantie that commence by diſſeiſin is in this manner, As where there is father and ſon, and the ſonne purchaſeth land, &c. & letteth the ſame land to his father for terme of years, and the father by his deed thereof inſeoffeth another in fee, and binde him and his heires to Warrantie, and the father dies, whereby the Warrantie deſcendeth to the ſon, this warrantie ſhall not barre the ſonne, for notwithſtanding this warrantie the ſonne may well enter into the land, or have an Aſſiſe againſt the Alienee if he will, becauſe the Warrantie commenced by diſſeiſin, for when the father which had but an eſtate for term of years made a feoffement in fee, this was a diſſeiſin to the ſon of the freehold which then was in the ſonne. In the ſame manner it is if the ſon letteth to the fa-

garrantie, &c. Et ſi-come eſt dit de pier, iſſint poit eſtre dit de chelcun auter aunceſter, &c. En meſme le maner eſt, ſi Tenaunt per Elegit, Tenaunt per Statute Merchant, ou Tenant per Statute de le Staple fait feoffment en Fé ouelque Garrantie, ceo ne barrera my lheire que doit auer la Terre, pur ceo que tiels Garranties cõmencerent per Diſſeiſin.

ther the Land to hold at will, and after the father make a feoffment with Warrantie, &c. And as it is ſaid of the father, ſo it may be ſaid of every other anceſter &c. In the ſame mãer is it, if tenant by *Elegit*, tenant by Statute Merchant, or tenãt by Statute ſtaple, make a feoffment in fee with warranty, this ſhall not bar the heire which ought to have the Land, becauſe ſuch Warranties cõmence by diſſeiſin.

iſſue, albeit the Diſſeiſin was done to the Donee and not to the Donor, yet the Warrantie ſhall not binde him. The father, the ſon and a third perſon are Joyntenants in fee, the father maketh a feoffment in fee of the whole with Warrantie, and dieth, the ſonne dieth, the third perſon ſhall not only avoid the feoffment for his own part, but alſo for the part of the ſonne, and he ſhall take advantage that the Warrantie commenced by Diſſeiſin, though the Diſſeiſin was done to another.

The ſecond quality appearing in Littletons examples is, that the Warranty and Diſſeiſin are ſimul & ſemel, both at one and the ſame time. (y) And yet if a man commit a Diſſeiſin of intent to make a feoffment in fee with warranty, albeit he make the feoffment many years after the Diſſeiſin, notwithſtanding becauſe the Warranty was done to that intent and purpoſe, the Law ſhall adjudge upon the whole matter, and by the intent couple the Diſſeiſin and the warrantie together.

(y) 19 H.8.12 lib.5. fol.79.b.Fitzh.caſe.

The third quality is, that the Warranty that commenceth by Diſſeiſin by all theſe examp'es (if it ſhould bind) ſhould bind as a Collaterall Warrantie, and therefore commencing by Diſſeiſin ſhall not binde at all.

¶ *Ne barrera my le heire, &c.* For by the authority of our Author himſelf, a Leſſee for yeares may make a feoffment, and by his feoffment a fee ſimple ſhall paſs, ſo as albeit as to the Leſſor it worketh by Diſſeiſin, yet betwixt the parties the Warrantie annexed to ſuch eſtate ſtandeth good: upon which the Feoffee may vouch the Feoffor or his heires, as by force of a lineal Warranty. And therefore if a Leſſee for years or Tenant by Elegit, &c. or a Diſſeiſor incontinent make a feoffment in fee with Warranty, if the Feoffee be impleaded, he ſhall vouch the Feoffor, and after him his heire alſo, becauſe this is a Covenant real, which bind him and his heirs to recompence in value, if they have aſſets by diſcent to recompence, for there is a feoffment de facto, and a feoffment de jure: (*) And a feoffment de facto made by them that have ſuch intereſt or poſſeſſion, as is aforeſaid, is good betwixt the parties, and againſt all men, but only againſt him, that hath right. And therefore if the Lord be Gardeine of the Land, or if the Tenant maketh a Leaſe to the Lord for years, or if the Lord be Tenant by Statute Merchant or Staple, or by Elegit of the Tenancy, and make a feoffment in fee, he hereby doth extinguiſh his Seigniorie, although having regard to the Leſſor it is a Diſſeiſin.

Vide Sect. 611, 699. Bract. fol. 216. 223, 224. Fleta, lib. 4. cap. 17. 158. Britton, cap. Diſſeiſin. 50 E. 3. 22. b. 8 H. 7. 5. 7 E. 3. 11. 14 E. 3. Feoffments en faits 67. 18 E. 3. Iſſue 36. 4 E. 2. Briefe 790. 19 E. 2. Aſſ. 400. 43 E. 3. 7. 17 E. 3. 41. 43 E. 3. Diſſ. 5. 8 E. 4. 17. 12 E. 4. 12. 10 E. 4. 18. F.N.B. 201. Lib. 3. fol. 98. in Fermors caſe. (*) Temps E. 1. Counter. plea de Voucher 126. 50 E. 3. Ibidem 124. Vide W. 1. cap. 48. in the ſecond part of the Inſtitutes.

The fourth qualitie is a Diſſeiſin, but that is put for an example, and the rather for that it is moſt uſual and frequent, but a warranty that commenceth by abatement or intruſion (that is when the abatement or intruſion is made of intent to make a feoffment in fee with warranty) ſhall not bind the right heir, no more than a Warranty that commenceth by Diſſeiſin, becauſe all do commence by wrong. And ſo it is if the Tenant dieth without heir, and an Anceſtor of the Lord enter before the Entrie of the Lord, and make a feoffment in fee with Warranty, and dieth, this Warrantie ſhall not bind the Lord, becauſe it commenceth by wrong, being in nature of an Abatement, Et ſic de ſimilibus.

Sect. 699.

¶ ITem, ſi Gardein en Chiualrie, ou Gardein en Socage fait

ALſo if Gardeine in Chivalrie, or Gardeine in Socage make

fait vn Feoffment en fée, ou en fée taile ou pur terme de vie ouelqz garrantie, &c. tiels garranties ne ſont pas barres a les Heires, as quix les terres ſerront diſcendus, pur ceo que ils commence per diſſeiſin.

a Feoffment in Fee, or in Fee taile, or for life, with Warrantie, &c. ſuch Warranties are not barres to the Heires to whom the Lands ſhall be diſcended, becauſe they commence by Diſſeiſin.

16 E. 3. Gar. 20. 8 Aſſ. 2. 43 E. 3. 7. and the Books aboveſaid. Vide Sect. 698.

¶ Here Littleton addeth the Caſe of Gardeine in Chivalry, and Gardeine in Socage: and Gardeine becauſe Warrare is alſo in the ſame caſe.

Sect. 700.

¶ *Auer & tener a eux ioinement, &c.* This is to be intended of a joint purchaſe in fee, for if the purchaſe were to the father and the ſonne, and the Heires of the ſonne, and the father maketh a Feoffment in fee with warranty, if the ſonne entreth in the life of the father, and the Feoffee re-enter, the father dieth, the ſonne ſhall have an Aſſiſe of the whole, and ſo is the Booke of 22 H. 6. to be underſtood. But if the ſonne had not entred in the life of the Father, than for the fathers moity it had been a bar to the ſonne, for that therein he had an eſtate for life, and therefore the warranty as to that moity, had been collateral to the ſonne, and by Diſſeiſin for the ſonnes moitie, and ſo a warranty defeated in part, and ſtand good in part. And this appeareth by the example that Littleton hath put. But if the purchaſe had been to the father and ſonne, and to the Heires of the Father, then the Entrie of the Sonne in the life of the Father, as to the avoidance of the warranty, had not availed him, becauſe his Father lawfully conveyed away his moitie.

13 Aſſ. 8. 13 E. 3. Gar. 24. 25. 37. 22 H. 6. 51. 8 H. 7. 6.

¶ *Item, ſi le pier & le fits purchaſe certaine Terres ou Tenements, a auer & tener a eux ioyntũt, &c. & puis le pier alien lentier a vn auter, & oblige luy & ſes Heires a garrantie, &c. & puis le pier deuie, cel Garrantie ne barrera my le fits de le moitie que a luy affiert de les dits terres ou tenements, pur ceo que quaunt a cel moitie que affiert a le fits, le Garrantie commence per Diſſeiſin, &c.*

ALſo if Father and Sonne purchaſe certain Lands or Tenements, To have and to hold to them joyntly, &c. and after the Father alien the whole to another, and binde him and his Heires to Warrantie, &c. and after the Father dieth, this Warrantie ſhall not barre the ſonne of the moity that belongs to him of the ſaid Lands or Tenements, becauſe as to that moitie which belongs to the Sonne, the Warrantie commences by Diſſeiſin, &c.

Temps E. 1. Vouch. 207. 39 E. 3 26. John Londons caſe, 14 H. 6.

If a man of full age and an Infant make a Feoffment in Fee with Warranty, this warranty is not void in part, and good in part, but it is good for the whole againſt the man of full age, and void againſt the Infant: for albeit the Feoffment of an Infant paſſing by Liverey of Seiſin be voydable, yet his Warrantie which taketh effect only by Deed, is meerly void.

Sect.

Sect. 701.

¶ ITem, ſi A. ď B. ſoit ſeiſie dun meſe, & F. de G. que nul droit ad dentrer en meſme le meaſe, claimaunt meſme le meaſe, a tener a luy & a ſes peires, entra en meſme le meaſe, mes le dit A. de B. adonque eſt continualmẽt demurrant en meſme le meaſe: En ceſt cas le poſſeſſion de franktenement ſerra tout temps adiudge en A. de B. & nemy en F. de G. pur ceo que en tiel caſe lou deux ſont en vn meaſe, ou autres Tenements, & lun claima per lun title, & lauter per lauter Title, la Ley adiudgera celuy en poſſeſſion que ad droit dauer le poſſeſſion de meſmes les Tenements. Mes ſi en le caſe auantdit, le dit F. de G. fait vn Feoffament a certaine Barrettors & Extortioners en le pais, p̃ maintenance de eux auer, de meſme le meaſe per vn fait de Feoffment oue Garrantie, per force de quel le dit A. de B.

ALſo if A. of B. be ſeiſed of a Meſe, and F. of G. that no right hath to enter into the ſame Meſe, claiming the ſaid Meſe to hold to him and to his Heires, entreth into the ſaid Meſe, but the ſame A. of B. is then continually abiding in the ſame Meaſe: In this Caſe the poſſeſſion of the Free-hold ſhall be alwayes adjudged in A. of B. and not in F. of G. becauſe in ſuch Caſe where two be in one Houſe or other Tenements, and the one claimeth by one Title, and the other by another Title, the Law ſhall adjudge him in poſſeſſion, that hath right to have the poſſeſſion of the ſame tenements. But if in the Caſe aforeſaid, the ſaid F. of G. make a Feoffment to certain Barrettors and Extortioners in the Country, to have maintenance from thẽ of the ſaid houſe, by a Deed of Feoffment with Warranty, by force whereof the ſaid

¶ *Lou deux ſont en vn meſe, &c. & lun claima per lun title, & lauter per auter title, &c.* For the rule is Duo non poſſunt in ſolido unam rem poſſidere. 19 H. 6. fol. 28. b. per Newton.

Theſe words of our Author be ſignificant and materiall: (h) for if a man hath iſſue two daughters, Baſtard eigne and Mulier puiſne, and die ſeiſed, and they both enter generally, the ſole poſſeſſion ſhall not be adjudged only in the Mulier, becauſe they both claime by one and the ſame title, and not one by one title, and the other by another title, as our Author here ſaith. (h) 17 E. 3. 59. H Aſſ. p. 25

(i) If the Tenant in an Aſſiſe of an houſe deſire the Plaintiffe to dine with him in the houſe, which the Plaintiffe doth accordingly, and ſo they be both in the houſe, and in truth one pretendeth one title, and the other another title, yet the Law in this caſe ſhall not adiudge the poſſeſſion in him that right hath, becauſe our Author here ſaith, he claimed not his right, and it ſhould be to his prejudice if the Law ſhould adjudge him poſſeſſion; and a Treſpaſſer he cannot be, becauſe he was inuited by the Tenant in the Aſſiſe. (i) Pl. Com. 91. the Parſon of Honey Lanes caſe

¶ *Barrettors.* A Barretor is a common Mover, and Exciter, or Maintainer of ſuits, quarrels, or parts, either in Courts or elſewhere in the Country. In Courts, as in Courts of Record, or not of Record, as in the County, Hundred, or other inferiour Courts. In the Countrie in theſe manners; Firſt, in diſturbance of the Peace. Secondly, in taking or keeping of poſſeſſions of Lands in controverſie, not only by force, but alſo by ſubtilitie See the Indicement of a common Barretor W. 2. cap. 8. & 32. 40 E. 3. 33. Lib. 8. fol. 36. b. Caſe de Barretrie.

tie and a deceit, and moſt commonly in ſuppreſſion of truth and right. Thirdly, by falſe inventions, and ſowing of calumniations, rumors, and reports, whereby diſcord and diſquiet may grow between neighbours.

33 E.1. Stat. de Conſpiratie. Lib. 8. ubi ſup.

¶ *Barreter* is derived of this word (Barrer) which ſignifieth not only a wrangling ſuit, but alſo ſuch brawles and quarrels in the Countrey, as are aforeſaid.

Pl.Com.fol.64. Lib.10 fol. 101,102. Beaufages Caſe.

¶ *Extortioners.* Extortion in his proper ſenſe is a great oppreſſion by wreſting or unlawfully taking by any Officer by colour of his Office, any money or valuable thing of or from any man, either that is not due, or more than is due, or before it be due, Quod non eſt debitum, vel quod eſt ultra debitum, vel ante tempus quod eſt debitum: For this it is to be known, that it is provided by the (l) Statute of W.1. That no Sheriffe nor any other Miniſter of the King, ſhall take any reward for doing of his Office, but only that which the King alloweth him, upon pain that he ſhall render double to the Party, and be puniſhed at the Kings pleaſure. And this was the ancient Common Law, and was puniſhable by fine and impriſonment, but the Statute added the aforeſaid penalty. But ſome latter Statutes having permitted them to take in ſome caſes, by colour thereof, the Kings Officers and Miniſters, as Sheriffs, Coroners, Eſcheators, Feodaries, Gaolers, and the like, do offend in moſt caſes; and being this Act yet ſtandeth in force, they cannot take any thing but where, and ſo farre as latter Statutes have allowed unto them. But yet ſuch reaſonable Fées as have been allowed by the Courts of Juſtice of antient time to inferiour Miniſters and Attendants of Courts for their labour and attendance, if it be aſked and taken of the Subject, is no extortion.

(l) W.1. c.26, &c. W.1. c.10.42 E.3.3.27 Aſſ. 14. Pl.Com.68.

33 H.6.c.10.33 H.6.22 21 H.7.17.Stanf.49. 3.E.3.Cor.372.

And all this was reſolved (n) by the whole Court of Kings Bench, between Shurley Plaintiffe, and Packer Deputy of one of the Sheriffes of London, in an Action upon the Caſe in the Kings Bench.

(n) Hil.13.Jac.Reg.

See the Statute of 21 H.8.cap.5. ſetting down the Fées of Ordinaries, Regiſters, and other Officers, in certain Caſes, and many other Statutes, as for example the Statute of 19 H.7.cap.8. againſt taking of Shewage (that is, taking of any thing for ſhewing of wares and Merchandiſes that be truly cuſtomed to the King before) and the like.

Of this crime it is ſaid, That it is no other than Robberie: And another ſaith, That it is more odious than Robberie, for Robbery is apparant, and hath the face of a crime; but Extortion puts on the viſure of Vertue, for expedition of Juſtice, and the like, and it is ever accompanied with that grievous ſin of perjury.

Pl.Com. in Dine & Manninghams caſe. Mir. 2 cap. 5. Sect. 1.

But largely Extortion is taken for any oppreſſion by extort power, or by colour of pretence of right, and ſo Littleton taketh it in this place. Extortio is derived from the Verbe Extorqueo, and it is called Crimen expilationis, or concuſſionis: And here Barretors and Extortioners are put but for examples, for if the Feoffment be made to any other perſon or perſons, the Law is all one.

7 E.4. 21.

¶ *Pur maintenance de eux auer.* Maintenance, Manutenentia is derived of the Verbe Manutenere, and ſignifieth in Law, a taking in hand, bearing up or upholding of quarrels and ſides, to the diſturbance or hindrance of common right; Culpa eſt rei ſe immiſcere ad ſe non pertinenti, and it is twofold, One in the Countrey, and another in the Court. For quarrels and ſides in the Court, (k) the Statutes have inflicted grievous puniſhments. But this kind of maintenance of quarrels and ſides in the Country, is puniſhable only at the ſuit of the King, (r) as it hath been reſolved. And this Maintenance is called Manutenentia, or Manutentio ruralis, for example, as to take poſſeſſions, or to keep poſſeſſions, whereof Littleton here ſpeaketh, or the like.

(k) 1 E.3.cap.14. 20 E.3.cap.4,5.

(r) Mich. 7. Ja. in the Starre-Chamber.

The other is called Curialis, becauſe it is done pendente placito, in the Courts of Juſtice, and this was an Offence at the Common Law, and is threefold.

First, To maintaine, to have part of the Land, or any thing out of the Land, or part of the Debt, or other thing in Plea or Suit, and this is called Cambipartia, Champertie.

33 E.1.Stat.2. in fine. Regiſt. 183. 6 E.3.33. 22 H.6.7. 9 H.7.22.

The ſecond is, when one maintaineth the one ſide, without having any part of the thing in Plea

Plea, or Suit, and this maintenance is two-fold, generall maintenance, and ſpecial maintenance, whereof you ſhall read at large in our Books, which were too long here to be inſerted.

:o Aſſ. 5.19 E.4.3.20. 17.6.11. 34 H.6.2.11.H. 6.11 8 H.5.8.10 E.4. 19 W.1.ca 25.28.W.2. cap.49. Artic ſuper Cart. cap.1. F. N.B.171,172. Mirror, cap.1. Sect. 5.

The third is when (u) one laboureth the Jury, if it be but to appear, or if he inſtruct them, or put them in fear, or the like, he is a maintainer, and he is in Law called an Embracer, and an Action of maintenance lyeth againſt him, and if he take money a decies tantum may be brought againſt him. And whether the Jury paſs for his ſide or no, or whether the Jury give any verdict at all, yet ſhall he be puniſhed as a Maintainer or Embracer either at the ſuit of the King or party.

(u) 13 H.4.16.b.F.N.B. 171.11 H.6.10. 37 H. 6.31.

Here in this caſe that Littleton putteth, the feoffement is void by the Statute (a) of 1 R.2. for thereby it is enacted, that feoffements made for Maintenance ſhall be holden for none, and of no value ſo as Littleton putteth his caſe at the Common Law, for he ſeemeth to allow the feoffment, where he ſaith, tiel feoffment fuit le cauſe, &c. but ſome have ſaid that the feoffement is not void between the Feoffor and the Feoffee, but to him that right hath.

(a) 1 R.2.cap.9. Vide 27 H.6.fol.23.

Now ſince Littleton wrote there is a notable Statute (b) made in ſuppreſſion of the cauſes of unlawful maintenance (which is the moſt dangerous enemy that Juſtice hath) the effect of which Statute is.

(b) 32 H.8 cap.9.

Firſt, That no perſon ſhall bargain, buy or ſell, or obtain any pretenced Rights or Titles.

Secondly, Or take, promiſe, grant, or covenant to have any Right, or Title of any perſon in or to any Lands, Tenements, or Hereditaments, but if ſuch perſon which ſo ſhall bargain, &c. their Anceſtors, or they by whom he or they claim the ſame have been in poſſeſſion of the ſame, or of the Reverſion or Remainder thereof, or taken the Rents or Profits thereof by the ſpace of one whole year, &c. upon pain to forfeit the whole value of the Lands, &c. and the buyer or taker, &c. knowing the ſame, to forfeit alſo the value.

Thirdly, Prohibited that it ſhall be lawful for any perſon, being in lawful poſſeſſion, by taking of the yearly Farm, Rents or Profits, to obtain and get the pretenced Right, or Title, &c. of any Lands in whereof he or they ſhall be in lawful poſſeſſion.

For the better underſtanding of which Statute, you muſt obſerve, that title or right may be pretenced two manner of wayes.

Firſt, When it is meerly in pretence or ſuppoſition, and nothing in verity.

Secondly, When it is a good right or title in verity, and made pretenced by the act of the party, and both theſe are within the ſaid Statute; for example, If A. be lawful Owner of Land, and is in poſſeſſion, B. that hath no right thereunto granteth to, or contracteth for the land with another, the Grantor and the Grantee (albeit the grant be meerly void) are within the danger of the Statute. For B. hath no right at all, but only in pretence. If A. be diſſeiſed in this caſe, A. hath a good lawful right, yet if A. being out of poſſeſſion granteth to, or contracteth for the Land with another, he hath now made his good right of entry pretenced within the Statute, and both the Grantor and Grantee within the danger thereof. A fortiori of a right in action. Quod nota.

Pl.Com.fol.80.&c. Partridges Caſe.

It is further to be known, that a right or title may be conſidered three manner of wayes.

Firſt, As it is naked and without poſſeſſion. Secondly, When the abſolute right commeth by Releaſe or otherwiſe to a wrongful poſſeſſion, and no third perſon hath either Jus proprietatis, or jus poſſeſſionis. The third, when he hath a good right, and a wrongful poſſeſſion. As to the firſt ſomewhat hath been ſaid, and more ſhall be ſaid hereafter. As to the ſecond, taking the former example, if A. be diſſeiſed, and the Diſſeiſee releaſe unto him, he may preſently ſell, grant, or contract for the Land, and need not tarry a year, for it is a rule upon this Statute, that whoſoever hath the abſolute Owner ſhip of any Land, Tenements, or Hereditaments (as in this caſe the Diſſeiſor hath) there ſuch Owner may at his pleaſure bargain, grant, or contract for the Land, for no perſon can thereby be prejudiced or grieved. And ſo if a man mortgage his Land, and after redeem the ſame, or if a man recover Land upon a former title, or be reſtored to an ancient right, he may at any time bargain, grant, or contract for the Land, for the reaſon aforeſaid. As to the third, if in the caſe aforeſaid the Diſſeiſor dieth ſeiſed, and A the Diſſeiſee entreth, and diſſeiſe the heir of the Diſſeiſor, albeit he hath an ancient right, yet ſeeing the poſſeſſion is unlawful, if he bargain or contract for the Land before he hath been in poſſeſſion by the ſpace of a year, he is within the danger of the Statute, becauſe the heir of the Diſſeiſor hath right to the poſſeſſion, and he is thereby grieved, & ſic de ſimilibus. And albeit he that hath a pretenced right (and none in verity) getteth the poſſeſſion wrongfully, yet the Statute extendeth unto him, aſwell as where he is out of poſſeſſion.

Pl.Com.Partridges caſe ubi ſup. 6 E.6. Brooke Tit. Maintenance. 38.

Note the words of the Statute be (any pretenced right) therefore a Leaſe for years is within the Statute, for the Statute ſaith not (the right) but any right) and the offendour ſhall forfeit the whole value of the Land. And where the Statute ſpeaketh of rights in the plural number, yet any one right is within the Statute. (a) But yet if a man make a leaſe for years to another to the intent to try the title in an ejectione firmæ that is out of the Statute, becauſe

23 Eliz. Dier. 374. Pl. Co. Partridges caſe. f. 87.

(a) Mich. 30. & 31 Eliz. 2811. inter Finch. & Cockham in Com. Banc

Jenins

because it is in a kinde of course of Law, but if it be made to a great man, or any other to sway or countenance the cause, that is within this Statute.

(b) Lib. 4. fol. 26. Copihold Cases.

Also the Statute speaks (of any right or title to any Land, &c.) (b) A customary right or a pretence thereof to Lands holden by Copie is within this Statute.

6 E. 6. tit. maintenance Brooke 38.

The said proviso (which is rather added for explanation, than of any necessity) extendeth only to a pretenced right or title, and to a good and clear right, and therefore without question, any that hath a just and lawful estate may obtain any pretenced right by release or otherwise, for that cannot be to the prejudice of any; nay, as hath been said, a Disseisor that hath a wrongful estate may obtain a release of the Disseisee, and that is not within the body of the Act, and consequently standeth not in need of any proviso to protect him.

c) 34. H. 8. Dier. 52.

And therefore (c) if there be Tenant for life, the Remainder in fee by lawful and just title, he in the remainder may obtain and get the pretenced right or title of any stranger, not only for that the particular Estate and the Remainder are all one, but for that it is a meane to extinguish the seeds of troubles and suits, and cannot be to the prejudice of any, as hath been said. And where the Statute saith, (being in lawful possession by taking the yearly Rent, &c.) those words are but explanatory, and put for example, for howsoever he be lawfully seised in Possession, Reversion, or Remainder, it sufficeth though he never took profit. But the matter observable upon this Proviso, which is worthy of observation, is, that if a Disseisor make a Lease for life, lives, or years, the Remainder for life, in tayle, or in fee, he in remainder cannot take a Promise or Covenant, that when the Disseisee hath entred upon the Land, or recovered the same, that then he should convey the Land to any of them in Remainder, thereby to avoid the particular estate, or the interest or estate of any other, for the words of the Proviso be, (buy, obtain, get or have by any reasonable way or meane) and that is not by promise or covenant to convey the Land after entry or recovery, for that is neither lawful being against the express purview of the body of the Act, and not reasonable, because it is to the prejudice of a third person. But the reasonable way or meane intended by the Statute, is by Release or Confirmation, or such Conveyances as amount to as much, and this agreeth with the letter of the Law, viz. the pretenced Right or Title of any other person, and Rights and Titles are by Release or Confirmation, as by reasonable wayes and means lawfully transferred and extinct, and the words of Promise or Covenant, &c. which are prohibited by the body of the Act, are omitted in the Proviso.

¶ *Relinquish le possession, &c.* This must be understood, that before livery of seisin upon the feoffement, A. de B. departed out of the house, for otherwise the livery and seisin should be void, because A de B. was in possession. And Littleton here saith, Per vn fait de Feoffment, so as albeit the Deed were made before the departure it is not material, but the departure must be before the livery of seisin, for that doth work the disseisin: And yet that which Littleton saith is true, that the feoffement was the cause that he relinquished his possession, for otherwise he would not have done it.

But admit that A. de B. had departed for any other cause, yet if F. de G. enter and enfeoffe certain Barretors or Extortioners, or any other with Warranty, this is a Warranty that commenceth by disseisin, for that the feoffement worketh a disseisin.

Sect. 702.

See before in the Chapter of Releases.

¶ This doth explain that which hath been said before. And albeit Littleton useth the words (and incontinently thereof make a Feoffement) and that in this case of Littleton the disseisin and feoffement were made (quasi uno tempore) yet if the Disseisin were made to the intent to make a feoffment with warranty, albeit the Feoffement be long after, this (as hath been said) is a Warranty

46 E. 3. 16.

¶ Item, si hom que nul droit ad dentrer en auters Tenements, entra en mesmes les tenements, & incontinēt ent fait vn Feoffement as auters per son fait oue Garrantie, & deliuer a eux seisin, cel Garrantie commence per disseisin

ALso if a man which hath no right to enter into other Tenements enter into the same Tenements, and incontinently make a Feoffement thereof to others by his deed with warranty & deliver to them seisin, this warranty cōmence

sin, pur ceo que le disseisin et le feoffement fueront faits quasi uno tempore. Et q̄ ceo est ley, poiez veier en vn plee M. 11. Ed. 3. en vn briefe de Formedon en le reuerter.

by disseisin, because the disseisin and feoffment were made as it were at one time. And that this is Law, you may see in a plee *M.* 11. *E.* 3. in a Writ of *Formelon* in the reverter.

that commenceth by Disseisin.

¶ *Mich.* 11. *E.* 3. This is mistaken, and should be (d) 31 E. 3. and so is the original, which case you shall see in Master Fitzherberts Abridgement, for there is no book at large of that year. Hereby you may perceive that learned men look not only to the cases reported, but unto Records, as you may see Littleton did, for Fitzherbert put this case in print long after, as elsewhere hath been shewed.

(d) 31 E. 3. tit. Garr. 28.

Sect. 703.

¶ Garranty lineal est, lou hoe seisie de terres en fee, fait feoffement p̄ son fait a vn auter, & oblige luy & ses heires a garranty, & ad issue et mozust, et le garrantie discendist a son issue, ceo est lineal garranty. Et la cause pur ceo q̄ est dit lineal garrantie, nest pur ceo que le garranty discendist de le pier a son heire, mes la cause est pur ceo que si nul tiel fait oue garranty fuisoit fait per le pier, donque le droit d̄ les tenements discenderoit al heire, & heire conueyeroit le discent de son pier, &c.

WArranty lineal is, where a man seised of lands in fee, maketh a feoffment by his Deed to another, & binds himself and his heirs to warranty, and hath issue and die, and the Warranty descend to his issue, this is a lineal warranty. And the cause why this is called lineal warrantie is not because the warrantie descēdeth from the father to his heir, but the cause is for that if no such Deed with warranty had been made by the father, then the right of the tenements should descend to the heir, and the heir should convey the discent from his father, &c

¶ *Garranty lineal, &c.* A Warrantie lineal is a Covenant real annexed to the Land by him which either was owner, or might have inherited the Land, and from whom this heir lineall or collaterall might by possibilitie have claimed the Land as heire from him that made the Warranty, whereof Littleton himself putteth divers cases, which shall be explained in their proper places. And in this case put in this Section Littleton (once for all) sheweth, that the reason of the example here put, is because if no such alienation with warranty (for so is Littleton to be intended) had been made, the very lands had descended to the heir, so as the case being put of lands in fee simple, the alienation without the Warranty had barred the heire. And note that it is called a lineal Warranty, not because it must descend upon the lineal heire, for be the heir lineal or collateral, if by possibility he might claim the land from him that made the Warranty, it is lineal. 35 E. 3. Garr. 73.

having regard to the warranty, and title of the Land: And also it is called lineal, in respect that the Warranty made by him that had no right, or possibility of right to the Land, is called Collateral, in regard that it is collateral to the title of the land. And it is also to be observed, that in all the cases that Littleton hath put or shall put the lineal or collaterall warranty doth binde the heire, and therefore the successour claiming in another right, shall not be bound by the warranty of any natural Ancestour. For which cause (c) in a Juris utrum brought by a Parson of a Church, the collateral Warranty of his Ancestour is no barre, for that he demandeth the land in the right of his Church in his politike capacity, and the warranty descendeth on him in his naturall capacity. (d) But some have holden that if a Parson bring an Writ, that a collateral Warranty of his Ancestour shall binde him, and their reason is, for that the

(c) 27 H. 6. Garr. 48.

(d) 34 E. 3. Garr. 71.

Aſſiſe is brought of his poſſeſſion and ſeiſin, and he ſhall recover the meane profits to his own uſe. But ſeeing he is ſeiſed of the freehold, whereof the Aſſiſe is brought in jure Eccleſiæ, which is in another right, then the Warranty, it ſeemeth that it ſhould not be any barre in the Aſſiſe. Eye like Law is of a Biſhop, Archdeacon, Dean, Maſter of an Hoſpitel, and the like, of their ſole poſſeſſions, and of the Prebend, Vicar, and the like.

(*) 45 Aſſ. 6. 6 E. 3. 56. Pl. Com. 234. & 553, 554

¶ *Et oblige luy & ſes heires.* * King H. 3. gave a Mannor to Edmund Earle of Cornwal, and to the heirs of his body, ſaving the poſſibility of Reverter, and died. The Earle before the Statute of W. 2. cap. 1. De donis conditionalibus by Deed gave the ſaid Mannor to another in fee with warranty in exchange for another Mannor, and after the ſaid Statute in the 28. year of E. 1. dieth without iſſue, leaving Aſſets in fee ſimple. Which Warranty and Aſſets deſcended upon King E. 1. as Coſin germain, and heir of the ſaid Earle, viz. Son and heir of King Henry the third, brother of Richard Earle of Cornwal, father of the ſaid Earle Edmund. And it was adjudged, that the King as heir to the ſaid Earle Edmund, was by the ſaid Warranty and Aſſets barred of the poſſibility of Reverter, which he had expectant upon the ſaid gift, albeit the Warranty and Aſſets deſcended upon the natural body of King E. 1. as heir to a ſubject, and King E. 1. claimed the ſaid Mannor, as in his Reverter in jure Coronæ in the capacity of his body politike, in which right he was ſeiſed before the gift. In this caſe, how by the death of the ſaid Earle Edmund without iſſue, the Kings title by Reverter, and the Warranty, and Aſſets came together, and that the Warranty was collateral, yet the King ſhall not be barred without Aſſets, as a ſubject ſhall be, and many other things are to be obſerved in this caſe, which the learned Reader will obſerve.

Vid. 27 H. 6. Garr. 48. 34 E. 3. Garr. 71.

Vid. Sect. 711, 712.

Sect. 704,705.

¶ CAr ſi ſoit pier & fits & le fits purchaſe terres en fee, et le pier de ceo diſſeiſt ſon fits, & aliena a vn auter en fee per ſon fait: & per meſme le fait oblige luy et ſes heires a garranter meſmes les tenements, &c. et le pier morust, ore eſt le fits barre dauer les dits tenements, car il ne poit per aſcun ſuit, ne per auter meane de la ley, auer meſmes les terres per cauſe del dit garrantie et ceo eſt vn collateral garranty, et vncore le garranty diſcendist lyne aliment de le pier a le fits.

FOr if there be father and ſon, and the ſon purchaſe lands in fee, and the father of this diſſeiſeth his ſon, and alieneth to another in fee by his Deed, and by the ſame Deed bind him and his heires to warrant the ſame tenements, &c. and the father dieth, now is the ſon barred to have the ſaid tenements, for he cannot by any ſuit, nor by other meane of Law have the ſame lands by cauſe of the ſaid warrantie. And this is a collateral Warrantie, and yet the Warrantie deſcendeth lineally from the father to the ſonne.

Sect. 705.

¶ MEs pur ceo que ſimul tiel fait oue garr̃ dit eſtre fait, le fits en nul maner puiſſoit conueyer le title que il ad a les tenements de ſon pier a luy, entant que ſon pier nauoit aſcun eſtate

BUt becauſe if no ſuch Deed with Warrantie had been made, the ſonne in no manner could convey the title which he hath to the tenements from his father unto him, inaſmuch as his fa-

eſtate en droit en les Tenements, pur ceo tiel Garrantie eſt appel collateral Garrantie, entant que celuy que fiſt le Garrantie eſt collateral a le title de les tenements, & ceo eſt a tant adire que ceſtuy a que le Garrantie diſcendiſt, ne puiſſoit a luy conueyer le title que il ad de les Tenements per my ceſtuy que fiſt le Garrantie, en cas que nul tiel Garrantie fuit fait.

ther had no eſtate in right in the Lands, wherefore ſuch Warranty is called Collateral Warranty, inaſmuch, as he that maketh the Warranty is collateral to the title of the Tenements, and this is aſmuch to ſay, as he to whom the Warranty deſcended, could not convey to him the title which he hath in the Tenements by him that made the Warranty, in caſe that no ſuch Warranty were made.

HEre Littleton putteth an example, proving that it is not called Lineal, becauſe it deſcendeth lineally from the Father to the Son, for in this caſe the Warranty deſcendeth lineally, and yet is a collateral Warranty. In this example you muſt intend that the Diſſeiſin was not of intent to alien with Warranty to barre the Son, but here the Diſſeiſin being done to the Son, without any ſuch intent, the alienation afterwards with Warranty doth barre the Sonne, becauſe that albeit the Warranty doth lineally deſcend, yet ſeeing the title is Collateral, that is, that the Son claimeth not the Land as Heir to his Father, therefore in reſpect of the title it is a Collateral Warranty. And thus doth Littleton agree (c) with the Authority of our Bookes. So as the diverſities do ſtand thus. Firſt, where the Diſſeiſin and Feoffment are uno tempore, and where at ſeveral times. Secondly, where the Diſſeiſin is with intent to alien with Warranty, and where the Diſſeiſin is made without ſuch intent, and the alienation with Warranty afterwards made.

5 E.3.14. 46 E.3.6. 19 H.8.12. 8 R.2. Gar. 100.
Vide Sect. 716.
(c) 16 E.3.6.5 E.3.14. 19 H.8.12.

Sect. 706.

ITem, ſi ſoit aiel, pier, & fits, & le aiel ſoit diſſeiſie, en que poſſeſſion le pier releas p ſon fait oue Garrantie, &c. & moruſt, & puis laiel moruſt, ore le fits eſt barre dauer les tenements per le Garrantie del pier. Et ceo eſt appel lineal Garrantie, pur ceo que ſi nul tiel Garrantie fuit, le fits ne puiſſoit conueyer le droit de les Tenements a luy, ne monſtre coment il eſt heire al Aiel forſ-

ALſo if there be Grandfather, Father, and Son, and the Grandfather is diſſeiſed, in whoſe poſſeſſion the Father releaſeth by his Deed with Warrantie, &c. and dieth, & after the Grandfather dieth, now the Son is barred to have the Tenements by the warranty of the Father. And this is called a lineal Warranty, becauſe if no ſuch Warranty were the Son could not convey the right of the Tenements to him, nor

HEre Littleton putteth an example where the ſon muſt claime the Land as Heir to his Grandfather, and yet becauſe he cannot make himſelf Heir to his Grandfather but by his father, it is lineal.

1 H.4.33.35 E.3. Gar. 73.

And it is to be obſerved, that the Warranty in this caſe deſcended upon the ſon, before the diſcent of the right, which happened by the death of the Grandfather in whom the right was, Vide Littleton cap. de Releaſes, and after in this Chapter, Sect. 707. & 741.

¶ *Pier releaſe per ſon fait oue Garrantie.*

(f) It is to be known, that upon every Conveyance of Lands, Tenements, or Hereditaments, as upon Fines, Feoffments, Gifts, &c. Releaſes and Confirmations made

(f) 14 E.3. Voucher 108. 16 E.3.ibid.87. 18 E.3.ibid.6.10 E.3.52 21 E.3 27. 11 H.4.22. 44 E.3.Cont. de Vouch. 22.12 H.7.1. Vid. Sect. 733, 738, 741.

made to the Tenant of the Land, a Warrantie may be made, albeit he that makes the Release or Confirmation, hath no right to the Land, &c.

que per meane del Pier.

shew how he is Heire to the Grandfather but by means of the Father.

but some do hold, That by Release or Confirmation, where there is no estate created, or transmutation of possession, a Warranty cannot be made to the Assignee.

Sect. 707.

¶ Item, si home ad issue deux fits & est disseisie, & leigne fits releasa al disseisor per son fait oue Garranty, &c. & mourust sans issue, & apres ceo le Pier mourust, ceo est vn lineall Garrantie al puisne fits, pur ceo que coment q̄ leigne fits mourust en la vie le Pier, vncore pur ceo que per possibilitie, il pusloit estre q̄ il pusloit conueier a luy l' title del terre per son eigne frere, si nul tiel Garrantie fuisloit. Car il pusloit estre que apres la mort le pier, leigne frere entroit en les Tenements & morust sans issue, & donque le puisne fits conueyera a luy le title per leigne fits. Mes en tiel cas si le puisne fits releasse oue Garrantie a le Disseisor, & mourust sans issue ceo est vn collateral Garrantie al eigne fits, pur ceo que de tiel terre que fuit al Pier, leigne per nul possibilitie poit conveyer a luy le title per meane de le puisne fits.

ALso if a man hath issue two sonnes, and is disseised, and the eldest sonne releasse to the Disseisor by his Deed with Warrantie, &c. and dies without issue, and afterwards the Father dieth, this is a lineal Warrantie to the younger Sonne, because albeit the eldest Sonne died in the life of the Father, yet by possibility it might have been, that he might convey to him the Title of the Land by his elder brother if no such Warrantie had been. For it might be, that after the death of the Father the elder brother entred into the Tenements and died without issue, and then the younger Sonne shall convey to him the title by the elder Son. But in this case if the younger Sonne releasse with Warr' to the Disseisor, & dieth without issue, this is a collateral Warr' to the elder Son, because that of such Land as was the Fathers, the elder by no possibility can convey to him the title by means of the younger son.

35 E. 3. Gar. 73. 11 H. 4. 33.

¶ HEre Littleton putteth an example, where the heir that is to be barred by the Warranty, is not to make his Discent by him that made the Warrantie, as in the case before; and yet because by possibility he might have claimed by the eldest Sonne, if he had survived the Father, and died without issue, and so the younger brother might by possibility have bin Heir to him, the Warrantie is lineal.

And here it is to be noted, that the Warranty of the eldest Sonne descended before the right descended, whereof more shall be said hereafter, Sect. 741. and the opinion of Littleton in this Case is holden for Law, against the opinions in 35 E. 3. Gar. 73.

9 E. 3. 16. 38 E. 3. 21. 46 E. 3. 26. 8 R. 2. Gar. 502.

¶ *Mes en tiel case le puisne fits releasse oue Garrantie, &c.* This Warrantie in this Case is collateral to the eldest Sonne, and to the Issues of his body: but if the eldest Sonne dieth without Issue of his body, then the Warranty is lineal to the Issues of the body of the youngest: and so the Warranty that was collateral to some persons, may become lineal to others.

Sect.

Sect. 708.

Item, ſi Tenant en le Taile ad iſſue trois fits, & diſcontinue le Taile en fee, & le mulnes fits releſſa per ſon fait al Diſcontinuee, & oblige luy & ſes heires a Garrantie, &c. & puis le tenant en le Taile mozuſt, & le mulnes fits mozuſt ſans iſſue, oze leigne fits eſt barre dauer aſcun recouerie per Briefe de Formedon, pur ceo que le Garrantie del mulnes frere eſt collateral a luy, entant que il ne poit per nul manner conueyer a luy per force del taile aſcun diſcent per le mulnes, & pur ceo cẽ vn collateral Garrantie. Mes en cẽ Cas ſi leigne Fits deuie ſans iſſue, oze le puiſn frere poit bien auer vn briefe de Formdon en le diſcender, & recouera meſme le fre, pur ceo que le Garrantie del mulnes eſt lineal al Fits puiſne, pur ceo que il puiſſoit eſtre que per poſſibilitie le mulnes puiſſoit eſtre ſeiſie p force del Taile apres la mozt ſon eigne frere, &

Alſo if Tenaunt in Taile hath iſſue three ſonnes, and diſcontinue the Tayle in fee, and the middle ſon releaſe by his Deed to the Diſcontinuee, and bind him and his heirs to Warranty, &c. and after the Tenant in tail dieth, and the middle ſonne dieth without iſſue; now the eldeſt ſonne is barred to have any recovery by Writ of *Formedon*, becauſe the Warrantie of the middle brother is collateral to him, inaſmuch as he can by no meanes convey to him by force of the Tayle any Diſcent by the middle, and therefore this is a collateral warrantie. But in this caſe if the eldeſt ſonne die without iſſue, now the youngeſt brother may well have a Writ of *Formdon* in the diſcender & ſhall recover the ſame land, becauſe the Warranty of the middle is lineal to the youngeſt ſon, for that it might be that by poſsibility the middle might be ſeiſed by force of the taile after the death of his eldeſt

Hereby it alſo appeareth, That a Warrantie that is collateral in reſpect of ſome perſons, may afterwards become lineall in reſpect of others. Whereupon it followeth, * That a Collateral warranty doth not give a Right, but bindeth only a Right ſo long as the ſame continueth: but if the Collateral warranty be determined, removed, or defeated, the Right is revived; (f) And yet in an Aſſiſe the Plaintiffe hath made his title by a Collateral Warranty. 8.R.2.Gar.101.

* 43 Aſſ.44. 24 H.8. tit. Taile Br.7 H.5.6.tit. Aſſ.350.34E.3.Droit.25 19 H.6.59.21 H.7.46. 5 H.7.29.3 H.7.9.b.

(f) 16Aſſ.p.16.27Aſſ.4 29 Aſſ.50.43 Aſſ.8. 14H.4.13.19 H.6.60.

Barre is a word common as well to the Engliſh as to the French, of which commeth the Nown, a Bar Barra. It ſignifieth legally a deſtruction for ever, or taking away for a time of the Action of him that right hath. And Barra is an Italian word, and ſignifieth Barre, as we uſe it, and it is called a Plea in Barre, when ſuch a Barre is pleaded. Here Littl. putteth an example of a barre of an eſtate taile by a Collateral warranty. It is to be obſerved, That in ſome Caſes an Eſtate taile may be barred by ſome Acts of Parliament made ſince Littleton wrote, and in ſome caſes an Eſtate tail cannot be barred, which might when Littleton wrote have been barred. For example, If Tenant in Taile levie a Fine with Proclamations according to the ſtatute, this is a barre to the Eſtate taile, but not to him in reverſion or remainder, if he maketh his claim, or purſue his Action within five years after the ſtate Taile ſpent. 4 H.7.c.24. & 32 H.8. c.36.

(b) If a gift be made to the eldeſt ſonne, and to the heires of his body, the remainder to the Father and to the heirs of his body, the father dieth, the eldeſt ſonne leviеth a Fine with proclamations, & dieth with- (b) Dalſon 2.El. & 7.El. Vide lib.3.fol.84. le caſe de Fines.

without iſſue, this ſhall barre the ſecond Sonne for the remainder deſcended to the eldeſt.

donque le puisne frer̃ puiſſoit conueyer ſon title de Diſcent per le mulnes.

brother, and then the youngeſt brother might convey his title of Diſcent by the middle brother.

If Tenant in tail be diſſeiſed, or have a right of action, and the Tenant of the Land levy a Fine with Proclamations, and five yeares paſs, the right of the eſtate tail is barred.

(b) 26 H.8.cap.13. 33 H.8.cap.20. 5 E 6.c2. 11.Stant.Pl.Coren.8.

(b) If Tenant in taile in poſſeſſion, or that hath a Right of Entry be attainted of high treaſon, the eſtate taile is barred, and the Land is forfeited to the King; and none of theſe were barres when Littleton wrote. A lineal Warranty and Aſſets was a bar to the eſtate tail when Littleton wrote, whereof more ſhall be ſaid hereafter.

(c) 12 E.4.19. Taltarums caſe.

(c) A common recovery with a Voucher over, and a Judgement to recover in value was a bar of the eſtate taile when Littleton wrote. (d) And of Common recoveries there be two ſorts, viz. one with a ſingle Voucher, and another with a double Voucher, and that is more common and more ſafe: there may be more Vouchers over.

(d) Vide douant Sect.690 Vid.lib.3. fol.5. Cuppledicks caſe, & fol.94,97, 106. Lib.1.fol.62. Capels caſe. Lib 2.fol.16.52,74,77. Lib.6.fol.41,32. Lib.10.fol.37. Marie Portingtons caſe.

(e) If the King had made a gift in taile, and the Donée had ſuffered a common recovery, this ſhould have barred the eſtate taile in Littletons time, but not the reverſion or remainder in the King. And ſo if ſuch a Donée had levied a fine with Proclamations after the Statute of 4 H.7. this had barred the eſtate taile, although the reverſion was in the King. (f) But ſince Littleton wrote a Common Recovery had againſt Tenant in tail of the Kings gift, or ſuch a fine levied by him, the reverſion continuing in the Crown, is no bar to the eſtate tail by the Statute of 34 H.8. And where the words of the Statute be (whereof the reverſion or remainder at the time of ſuch recovery had, ſhall be in the King) theſe ten things are to be obſerved upon the conſtruction of that act.

(e) 38 H.8 taile Br.41. Pl.Com fol.555. 29 H.8. Dier 52.

(f) 34 H.8.cap. 20.

Firſt, that the eſtate taile muſt be created by a King, and not by any Subject, albeit the King be his Heir to the Reverſion, for the Preamble ſpeaks of gifts made to Subjects, and none can have Subjects but the King. And alſo in the Preamble it is ſaid (for ſervice done to the Kings of the Realm) and the body of the Act referreth to the Preamble. (g) And therefore if the Duke of Lancaſter had made a gift in tail, and the reverſion deſcended to the King, yet was not that eſtate taile reſtrained by that Statute, and ſo of the like.

(g) Trin.23. Eliz.inter Dively & Aſhton reſolved in the Court of Wards. Lib.3.fol.15,& 16. in Wiſemans caſe.

Secondly, If the King grant over the reverſion, then a recovery ſuffered will bar the ſtate tail, becauſe the King had no reverſion at the time of the recovery.

Thirdly, If the King make a gift in taile, the remainder in taile, or grant the reverſion in taile, keeping the reverſion in the Crown, a recovery againſt Tenant in taile in poſſeſſion ſhall neither bar the eſtate taile in poſſeſſion by the expreſs purview of the Statute, nor by conſequence the ſtate in remainder or reverſion, for that the reverſion or remainder cannot be barred, but where the eſtate taile in poſſeſſion is barred.

Lib.8.fol.77,78. The Lord Staffords caſe.

Fourthly, If a Subject make a gift in taile, the Remainder to the King in fee, albeit the words of the Statute be, (whereof the Reverſion or Remainder of the ſame, &c. yet ſaying the eſtate in taile was not created by a King, as hath been ſaid, the eſtate taile may be barred by a common recovery.

Lib.8.fol.15,16. Wiſemans caſe. Lib.2.fol.52. Cholmleyes caſe.

Fifthly, If Prince Henry Son of Henry the Seventh, had made a gift in taile, the Remainder to Henry the Seventh in fee, which Remainder by the death of Henry the Seventh had deſcended to Henry the Eighth, ſo as he had the Remainder by Diſcent, yet might Tenant in taile, for the cauſe aforeſaid, bar the eſtate taile by a common recovery.

Lib.2.fol.16. Wiſemans caſe.

Sixthly, The word (Remainder) in the Statute is no vain word, for the words of the Preamble be, The King hath given or granted, or otherwiſe provided to his Servants and Subjects. The word (Reverſion) in the body of the Act hath reference to theſe words (given or granted) and (Remainder) hath reference to theſe words (otherwiſe provided.) As if the King in conſideration of Money, or of aſſurance of Land, or for other conſideration by way of proviſion, procure a Subject by Deed indented and inrolled, to make a gift in taile to one of his Servants and Subjects for recompence of ſervice, or other conſideration, the Remainder to the King in fee, and all this appear of Record; this is a good proviſion within the Statute: and the Tenant in taile cannot by a common recovery barre the eſtate taile. So it is, if the Remainder be limited to the King in taile: but if the Remainder be limited to the King for years, or for life, that is no ſuch Remainder, as it is intended by the Statute, becauſe it is of no Remainder of continuance, as it ought to be, as it appeareth by the Preamble, and it ought to have ſome affinity with a Reverſion, wherewith it is ſoyned.

Seventhly, where a common recovery cannot barre the ſtate tail by force of the ſaid Statute, there a fine levied in fee, in tail, for lives, or years, with Proclamations according to the Statutes, ſhall not barre the eſtate tail, or the iſſue in taile where the Reverſion or Remainder

mainder is in the King, as is aforesaid, by reason of these words in the said Act, (the said recovery or any other thing or things hereafter to be had, done, or suffered by or against any such Tenant in tail to the contrary notwithstanding) which words include a fine levied by such a Donee, and restraineth the same.

So resolved Basch. 31. Eliz. Rot. 1645 in Notleys case in Communi Banco.

Eighthly, But where a common recovery shall barre the estate taile, notwithstanding that Statute, there a fine with Proclamations shall bar the same also.

Ninthly, Where the said latter words of the Statute be (had, done, or suffered by or against any such Tenant in tail) the sense and construction is, where Tenant in tail is party or privy to the Act, be it by doing or suffering that which should worke the barre, and not by meer permission, he being a stranger to the Act.

So holden Trin. 39. Eliz. Rot. 1914. inter Stratford and Power in Communi Banco.

As if Tenant in taile of the gift of the King, the reversion to the King expectant, is disseised, and the Disseisor levie a fine, and five years pass, this shall barre the estate taile: and so if a collateral Ancestor of the Donee release with Warranty, and the Donee suffer the Warranty to descend without any entry made in the life of the Ancestour, this shall bind the Tenant in taile, because he is not party or privy to any Act, either done or suffered by or against him.

Tenthly, Albeit the preamble of the Statute extend only to gifts in taile made by the Kings of England before the Act (viz. hath given and granted, &c.) and the body of the Act referreth to the preamble (viz. that no such feined recovery hereafter to be had against such Tenant in taile, so as this word (such) may seem to couple the body and the preamble together, yet in this case (such) shall be taken for such in equal mischief, or in like case, and by divers parts of the Act it appeareth, that the makers of the Act intended to extend it to future gifts, and so is the Law taken at this day without question.

33 E. 3. judgement. 252. 5 H. 6. 35. 10 H. 6. 5. 14 E. 4. 5. b. 15 E. 4. 8. F. N. B. 134. b. Pl. Com. 237. 28 b. 3. 95. F. N. B. 281.

A recovery in a Writ of Right against Tenant in taile without a Voucher, is no barre of any gift in taile.

If Tenant in taile the remainder over in fee cesse, and the Lord recover in a Cessavit, this shall not barre the estate taile, for the issue shall recover in a Formedon: neither were either of these barres when Littleton wrote. But let us now hear Littleton.

Sect. 709.

¶ Item, si Tenant ẽ taile discontinua l' taile, & ad issue & deux, & uncle del issue relessa al discontinuee oue Garrantie, &c. & morust sans issue, ceo est collateral Garranty al issue en taile, pur ceo que le Garrantie discendist sur issue, le quel ne poit soy conveyer a le taile per meane de son uncle.

ALso if tenant in taile discontinue the taile and hath issue and dieth, and the Uncle of the issue release to the Discontinuee with Warrantie, &c. and dieth without issue, this is a collateral Warranty to the issue in tayle, because the Warranty descendeth upon the issue, that cannot convey himself to the entayle by means of his uncle.

¶ The reason wherefore the Warranty of the Uncle having no right to the Land entailed shall barre the issue in tayle is, for that the Law presumeth that the Uncle would not unnaturally disherit his lawful heire being of his own blood, of that right which the Uncle never had, but came to the heir by another meane, unlesse he would leave him greater advancement. Nemo præsumitur alienam posteritatem suæ prætulisse. And in this case the Law will admit no proof against that which the Law presumeth. And so it is of all other Collateral warranties, for no man is presumed to do any thing against nature.

Pl. Com. fol. 307. a. in Sharingtons case.

(k) And the like holdeth in some other Cases, as if a Rent be behind for twenty years, and the Lord make an Acquittance for the last that is due, all the rest are presumed to be paid, and the Law will admit no proof against this presumption. (l) So if a man be within the four Seas, and his wife hath a child, the Law presumeth that it is the child of the husband, and against this presumption the Law will admit no proof.

(k) 11 H. 4. 55. 16 Eliz. Dier 271.

(l) 7 H. 4. 9.

(m) If a man that is innocent be accused of Felony, and for fear flieth for the same, albeit

(m) 3 E. 3. Coron. Fitz.

deit he judicially acquitteth himself of the Felony, yet if it be found that he fled for the Felonie, he shall notwithstanding his innocency forfeit all his Goods and Chattels, Debts and Duties, for as to the forfeiture of them the Law will admit no proof against the presumption in Law grounded upon his flight: and so in many other Cases. But yet the general rule is, Quod stabitur presumptioni donec probetur in contrarium. But as you see it hath many exceptions.

Bracton lib 3. cap. 9.

(n) Rot. Parliament. 50 E. 3. num. 77.

(n) It hath been attempted in Parliament, that a Statute might be made, that no man should be barred by a Warranty collateral, but where Assets descend from the same Ancestor: but it never took effect, for that it should weaken common Assurances.

Sect. 710.

¶ A *disme deux files. Jt husband and wife, Tenants in special tayle, have issue a daughter, and the wife die, the husband by a second wife hath issue another daughter, and discontinueth in fee and dieth, a collateral Ancestor of the daughters releaseth to the discontinuee with warranty and dieth, the warranty descendeth upon both daughters, yet the issue in taile shall be barred of the whole, for in judgement of Law the entire warranty descendeth upon both of them.

5 E. 2. Garr. 78. lib. 8. fol. 41 Syms Case.

¶ *Et leigne enter en lentiertie & ent fait vn feoffement, &c.* Here it is to be understood, that when one Coparcener doth generally enter into the whole, this doth not debest the estate which descended by the Law to the other, unless she that doth enter claimeth the whole, and taketh the profits of the whole, for that shall debest the freehold in Law of the other Parcener.

See before in the Chapter of Discent, Sect. 398.

Otherwise it is after the Parceners be actually seised, the taking of the whole profits by one claim made by the one cannot put the other out of possession without an

¶ Item, si le tenant en tayle ad issue deux files e morust, e leigne entra en le entierty e ent fait vn feoffemẽt en fee oue garrantie, &c. et puis leigne file morust sans issue, en cest cas le puisne file est barre quant al vn moitie, et quant al auter moitie el nest pas barre. Car quant a la moitie que affiert a le puisne file el est barre, pur ceo que quant a cel part el ne poit conueyer le discent per my le maine de son eigne soer et pur ceo quant a cel moitie, ceo est vn collateral Garrantie. Mes quant al auter moity que affiert a son eigne soer, le Garrantie nest pas barre a le puisne soer, pur ceo que el poit conueyer son discent, quant a cel moitie que affiert a son eigne soer per meisne le eigne soer, issint quant a cest moitie que affiert al eigne soer, le Garrantie

Also if the Tenant in tayl hath issue two daughters and dieth, and the elder entreth into the whole, and thereof maketh a feoffement in fee with warrantie, &c. and after the elder daughter dieth without issue: In this case the younger daughter is barred as to the one moitie and as to the other moitie she is not barred. For as to the moity which belongeth to the younger daughter, she is barred, because as to this part she cannot convey the discent by means of her eldest sister, and therefore as to this moity, this is a collateral Warranty. But as to the other moity, which belongeth to her elder sister, the Warrantie is no bar to the younger sister, because she may convey her discent as to that moity which belongeth to her elder sister by the same elder sister, so as to this moity which be-

tie eſt lineal al puiſne ſoer.

longeth to the elder ſiſter the warranty is lineal to the younger ſiſter,

Sect. 711.

¶ ET nota q̃ quant a celuy que demanda fé ſimple per aſcun de ſes auncеſtors, il ſerra barre per Garrantie lineal que diſcendiſt ſur luy, ſinon que ſoit reſtraine per aſcun eſtatute.

AND note, that as to him that demandeth fee ſimple by any of his Anceſtors, he ſhall be barred by Warranty lineal which deſcendeth upon him, unleſs he be reſtrained by ſome Statute.

Sect. 712.

¶ MES il q̃ demande fé taile per briefe de Formedon en diſcender, ne ſerra my barre p̃ lineal Garrantie, ſinon q̃ il ad Aſſets p̃ diſcent en fé ſimple per meſme launceſter q̃ fiſt le Garranty. Mes collateral Garrantie eſt barre a celuy q̃ demanda fé, & aury a celuy que demanda fé taile ſans aſcun auter diſcent de fé ſimple, ſinon en caſes queux ſont reſtraines per les eſtatutes, et auters caſes pur certaine cauſes, come ſerra dit en apres.

BUT he that demandeth Fee tayle by Writ of *Formedon* in *diſcender*, ſhall not be barred by lineal warranty, unleſs he hath Aſſets by diſcent in fee ſimple by the ſame Anceſtour that made the warranty. But collateral Warranty is a barre to him that demandeth fee, and alſo to him that demandeth fee Tayle without any other diſcent of fee ſimple, except in caſes which are reſtrained by the Statutes, and in other caſes for certain cauſes, as ſhall be ſaid hereafter.

actual putting out or diſſeiſin. And in this caſe of Littleton, when one Coparcener entreth into the whole, and maketh a feoffment of the whole, this deveſteth the freehold in Law out of the other Coparcener.

Now ſeing the entrie in this caſe of Littleton deveſted not the eſtate of the other Parcener, if no further proceeding had been, then it is to be demanded, that ſeing the feoffement doth worke the wrong, and be the wrong either a diſſeiſin, or in nature of an abatement, how can the Warranty annexed to that feoffement that wrought the wrong be collateral or bind the youngeſt ſiſter for her part: to this it is anſwered, that when the one ſiſter entreth into the whole, the poſſeſſion being void, and maketh a feoffment in fee, this Act ſubſequent doth ſo explain the entry precedent into the whole, that now by conſtruction of Law, ſhe was only ſeiſed of the whole, and this feoffement can be no diſſeiſin, becauſe the other ſiſter was never ſeiſed, nor any abatement, becauſe they both made but one heire to the Anceſtour, and one Freehold and Inheritance deſcended to them. So as in judgement of Law the Warrantie doth not commence by diſſeiſin or by abatement, and without queſtion her entrie was no intruſion. Pl. Com. 543.

Tenant in tayle hath iſſue two daughters, & diſcontinueth in fee, the youngeſt diſſeiſeth the diſcontinuee to the uſe of her ſelf and her ſiſter, the Diſcontinuee outſteth her, againſt whom ſhe recovereth in an Aſſiſe, the eldeſt agreeth to the Diſſeiſin, as ſhe may againſt her ſiſter, and become Joyntenant with her. And thus is the Booke in the 21. Aſſiſe (n) to be intended, the caſe being no other in effect; but A. diſſeiſeth one to the uſe of himſelf and B, B. agreeth, by this he is Joyntenant with A. (n) 21 Aſſ. p. 19.

3 E.3.22. 4 E.3.28.59. 6 E.3 56.7 E.3 54.57. 9 E.3.16. 10 E.3.14. 15 E.3. Gar.27. 30 E. 3. Ibid.39.25. E.3.50.27. E.3.83.248 E.3.Garr.16. Mich.38.E.3 Coram Rege Abbot de Colchesters case.5 Ass 6.Pl Com. 554.19 E.3.10. Vid.Sect.703,747.

¶ *Et nota que quant a celuy que demanda fee simple, &c.* In these two Sections there are expressed four legal conclusions:

First, That a lineal Warranty doth bind the right of a Fée simple.

Secondly, That a lineal Warranty doth not bind the right of an Estate taile, for that it is restrained by the statute of Donis conditionalium.

Thirdly, That a lineal warranty and Assets is a barre of the right in Taile, and is not restrained (as hath been said) by the said Act.

Fourthly, That a Collateral Ancestor of the Doné, doth binde the right of an estate taile, albeit there be no Assets, and the reason thereof is upon the Statute of Donis conditionalibus, for that it is not made by the Tenant in taile, &c. as the lineal Warrantie is.

To this may be added, that the Warranty of the Doné in taile, which is collateral to the Donor, or to him in remainder, being heire to him doth binde them without any Assets. For though the alienation of the Doné after issue doth not barre the Donor, which was the mischief provided for by the Act, yet the Warranty being collateral doth barre both of them, for the Act restraineth not that warranty, but it remaineth at the Common Law, as Littleton after saith: and in like manner the Warranty of the Doné doth bar him in the remainder.

Fleta lib.2.ca.65.Britton 185.4 E.3.Gar.63.16. F.3.Ass.1.43 E.3.9.7 H. 6.3.11 H.4.20.

¶ *Assets.* (id est) quod tantundem valet, sufficient by discent.

Note Assets requisite to make a lineal Warranty a bar must have six qualities. First, it must be Assets (that is) of equal value, or more at the time of the Discent. Secondly, it must be of discent, and not by purchase or gift. Thirdly, as Littleton here saith, it must be Assets in fee simple, and not in taile, or for another mans life. Fourthly, it must descend to him as heir to the same Ancestor that made the Warranty, as Littleton also here saith. Fifthly, it must be of lands or tenements, or rents, or services valuable, or other profits issuing out of lands or tenements, and not personal inheritances, as Annuities, and the like. Sixthly, it must be in state or interest, and not in use or right of actions or rights of entry, for they are no Assets until they be brought into possession. (a) But if a Rent in fee simple issuing out of the land of the heir descend unto him whereby it is extinct, yet this is Assets, and to this purpose hath in judgement of Law a continuance.

24 E.3.47.

(a) 31 E.3.Ass.5.13 E. 3.Recovery in value 17. Lib.3.fol.31. Butler & Bakers case.

(b) A Seigniory in lieu Vmoigne is no Assets, because it is not valuable, and therefore not to be extended, and so it seemeth of a Seigniory of Homage and fealty. But an Aduowson is Assets, whereof (c) Fleta saith; Item de Ecclesiis quæ ad donationem domini pertinent quot sunt, & quæ, & ubi, & quantum valeat quælibet Ecclesia per annum secundum veram ipsius æstimationem, & pro marca solidus extendatur, ut si Ecclesia centum marcas valeat per annum, ad centum solidos extendatur advocatio per annum. And herewith agreeth Britton, and others have reckoned a shilling in the pound, and Britton addeth further, Mes si la aduowson duist estre vendue, adonques seri'le reasonable price solonque le value en vn an a cel extent. wherein it is to be observed, that Antiquity did ever reckon by markes.

(b) 14 E.3 Mesne 7.Registrem 293.

(c) Fleta lib.2 cap.65. Britton fol. 185. Extent. manerii,5 H.7 47.32 H. 6.21. 33 E.3.Gar.102.

Sect. 713.

¶ Item, si terre soit done a vn home et a les heires de son corps engendres le quel prent feme, et ont issue fits entre eux, & le baron discontinua le taile en fée, et deuy, & puis la feme relessa al discontinuée en fée oue garrantie, &c. et morust, et le garrantie discendit a le fits, ceo est vn collateral garrantie.

ALso if land be given to a man and to the heires of his body begotten, who taketh wife, and have issue a son between them, and the husband discontinues the taile in fee and dieth, and after the wife releaseth to the Discontinuee in fee with Warrantie, &c. and dieth, and the Warranty descends to the son, this is a collateral Warrantie.

¶ This case standeth upon the same reason that divers other formerly put by our Author, do, viz. that because the heir claimeth only from the father Per formam doni, and nothing from the wife, that therefore the warranty of the wife is collateral, and the Warrantie made by any Ancestor male or female of the wife bindeth, and here the warranty descended after the discent of the right.

Sect.

Sect. 714.

MEs ſi Tenements ſoyent dones a le baron & a ſa feme, & a les Heires de lour deux corps engendres, queux ont iſſue fits, & le baron diſcontinua le taile & mozuſt, & puis la feme relella oue Garrantie, & mozuſt, ceſt Garrantie neſt forſque vn lineal Garrantie a le fits: Car le fits ne ſerra barre en ceo cas de ſuer ſon bꝛe de Formedon, ſinon que il ad aſſets per diſcent en fee ſimple per ſa mere, pur ceo que lour iſſue en Bꝛiefe de Formedon couient conueyer a luy le dꝛoit come Heire a ſon pere & a ſa mere de lour deux corps engendres, per forme del done, & iſſint en tiel caſe, le Garrantie de le Pere, & le Garrantie de la Mere ne ſont forſque lineal Garr al Heire, &c.

BUt if lands be given to the huſband & wife, and to the heirs of their two bodies begotten, who have iſſue a ſon, and the huſband diſcontinue the taile and dieth, and after the wife releaſe with warrantie and dieth, this warrantie is but a lineal warrantie to the ſon; For the ſonne ſhall not be barred in this caſe to ſue his Writ of *Formedon*, unleſs that he hath Aſſets by diſcent in Fee ſimple by his mother, becauſe their iſſue in the Writ of *Formedon* ought to convey to him the right as heir to his father and mother of their two bodies begotten *Per formam doni*, and ſo in this caſe the Warranty of the father and the Warrantie of the mother are but lineal Warrantie to the heire, &c.

HEre is a point wozthy of obſervation, that albeit in this caſe the iſſue in Taile muſt claime as heire of both their bodies, yet the warranty of either of them is lineal to the iſſue, and yet the iſſue cannot claim as heir to either of them alone, but of both. 35 E. 3. tit. Gar. 78.

If lands be given to a man and to a woman unmarried, and the heires of their two bodies, and they entermarrie, and are diſſeiſed, and the husband releaſe with Warranty, the wife dieth, the husband dieth, albeit the Donées did take by moities, yet the warranty is lineal foꝛ the whole, becauſe as our Authoꝛ here ſaith, the iſſue muſt in a Formedon convey to him the right as heire to his father and his mother of their two bodies engendꝛed, and therefoꝛe it is collateral foꝛ no part.

Sect. 715.

ET nota que en chelcun cas ou home demanda tenements en Fee taile per Bꝛiefe de Formedon, ſi alcun del iſſue en le Taile que auoit poſſeſsion ou que nauoit alcun poſſeſſion fait vn Garrantie, &c. ſi celuy que ſuiſt le Bꝛiefe de Formedon puiſſoit p alcun poſſibilitie per matter que puiſſoit eſtre en fait, conueyer a luy per my celuy que fiſt le Garrantie

AND note that in every caſe where a man demandeth lands in Fee taile by Writ of *Formedon* if any of the iſſue in Taile that hath poſſeſſion, or that hath not poſſeſſion make a Warranty, &c. if he which ſueth the Writ of *Formedon* might by any poſſibility by matter which might be in fait, convey to him, by him that made the Warranty *Per formam doni*, this is a li-

rantie perfoꝛme del done, ceo eſt vn lineal Garr̃, & nẽy collateral.

neall Warranty and not collaterall.

35 E. 3. Gar. 73. ¶ Of this ſufficient hath bẽn ſaid beforꝛe, for it is a point of great uſe and conſequence.

Sed nunquàm nimis dicitur quod nunquàm ſatis dicitur,

Sect. 716, 717.

¶ Item, ſi home ad iſſue trois fits, & il dona Terre al eigne fits, a auer & tener a luy & a les heires de ſon coꝛps engendꝛes, & pur default de tiel Iſſue, le remainder al mulnes fits a luy, & a les heires de ſon coꝛps engendꝛes, & pur default d̃ tiel iſſue del mulnes, le remainder al puiſne fits & les heires de ſon coꝛps engendꝛes, en ceſt cas ſi leigne diſcontinua le Tayle en fee, & oblige luy & ſes heires a Garrantie, & moꝛuſt ſans Iſſue, ceo eſt vn collateral Garrantie al mulnes fits, & ſerra barre a demaunder meſme la Terre per foꝛce del remainder, pur ceo que le remainder eſt ſon title, & ſon eigne frere eſt collateral a cel title, que commence per foꝛce del remainder. En meſme le maner eſt, ſi le mulnes fits auoit meſme la Terre per foꝛce del remainder, pur ceo que ſon eigne frere ne fiſt aſcun diſcontinuance, mes moꝛuſt ſans iſſue de ſon coꝛps & puis le mulnes fait vn diſcontinuance oue Garrantie, &c. & moꝛuſt ſans iſſue, ceo eſt vn collateral Garrantie a le puiſne fits. Et auꝛy en ceſt caſe ſi aſcun de les dits fits ſoit diſſeiſie, & le pere que fiſt le done, &c. releſſa a le Diſſeiſoꝛ tout ſon dꝛoit oue Garrantie, ceo eſt vn collateral Garrantie a celuy fits ſur que le Garrantie diſcendiſt, Cauſa qua ſupra.

ALſo if a man hath Iſſue three ſonnes, and giveth land to the eldeſt ſon, to have and to hold to him and to the Heires of his body begotten, and for default of ſuch iſſue, the remainder to the middle ſon, to him and to the Heires of his body begotten, and for default of ſuch iſſue of the middle ſonne, the remainder to the youngeſt Son and to the Heires of his body begotten; In this caſe, if the eldeſt diſcontinue the tail in fee, and bind him and his Heirs to Warranty, and dieth without iſſue, this is a collateral Warranty to the middle ſon, & ſhall be a bar to demand the ſame land by force of the Rem', for that the remainder is his Title, and his elder brother is collateral to this Title, which commenceth by force of the remainder. In the ſame manner it is, if the middle ſon hath the ſame Land by force of the Remainder, becauſe his eldeſt brother made no diſcontinuance, but died without Iſſue of his body, and after the middle make a diſcontinuance with Warranty, &c. & dieth without Iſſue, this is a collateral Warrantie to the youngeſt ſon. And alſo in this caſe if any of the ſaid ſons be diſſeiſed, and the Father that made the gift, &c. releaſeth to the Diſſeiſor all his right with Warrantie, this is a collateral Warrantie to that Son upon whom the Warrantie deſcendeth, *Cauſa qua ſupra.*

Sect.

Sect. 717.

ET sic nota, Que lou home que est collateral a le Title, et ceo release oue Garrantie, &c. ceo est vn Collateral Garrantie.

And so note, That where a Man that is collateral to the Title, and releaseth this with Warranty, &c. this is a collateral Warranty.

HEre it appeareth, That it is not adiudged in Law a Collateral Warranty, in respect of the blood, for the Warranty may be collateral, albeit the blood be lineal, and the Warranty may be lineal, albeit the blood be collateral, as hath been said. But it is in Law deemed a Collateral Warranty, in respect that he that maketh the Warranty is collateral to the title of him upon whom the Warranty doth fall, as by the example which Littleton here putteth, and by that which hath been formerly said, is manifest. 8 R. 2. Gar. 102. V. 508. 704.

Sect. 718.

ITem, si Pier dona Terre a son eigne fits, a suer et tell a luy & a les hẽz Males de son corps ingendrez, le Remainder a le second fits, &c. si leigne fits alienast en fee ouesq; Garrantie, &c. et ad issue femele, et morust sans issue male, ceo nest pas collateral Garrantie al second fits, car il ne serra barre de ꝑ action de Formedon en le remainder, pur ceo que le Garrantie discendist al fitz del eigne fits, & nemy al second fits. Car chescun Garrantie que discendist, discendist a celuy que est heire a luy que fist le Garrantie per le Common Ley.

ALso if a father giveth land to his eldest son, to have and to hold to him and to the heires males of his body begotten, the remainder to the second sonne, &c. if the eldest sonne alieneth in fee with warranty, &c. and hath issue female, and dieth without issue male, this is no collateral warranty to the second son, for he shall not be barred of his Action of *Formedon* in the remainder, because the warranty descended to the daughter of the eldest son, and not to the second sonne: for every Warrantie which descends, descendeth to him that is heir to him who made the Warrantie by the Common Law.

HEre is rehearsed a maxime of the Common Law, that every Warranty doth descend upon him that is heire to him that made the Warranty, by the common Law, as by this example it appeareth. Vid. Sect. 3. fol. 735. 736, 737.

A celuy que est heire a luy que fist le Garrantie per le Common ley. &c. Wherupon in many things hereafter to be known are to be understood.

(a) First, That if a man infeoffeth another of an acre of ground with warrantie, and hath issue two sons, and dieth seised of another acre of land, of the nature of Burrough English, the feoffee is impleaded, albeit the Warrantie descendeth only upon the eldest sonne, yet may he vouch them both; (the one as heire to the warranty, and the other as heir to the land: for if he should vouch the eldest son only, then should he not have the fruit of his Warranty, viz. a recovery in value, the youngest son only he cannot vouch, because he is not heire at the Common law, upon whom the Warrantie descendeth. (a) 40 E. 3. 14.

(b) So it is of Heirs in Gavelkind, the eldest may be vouched as heir to the other (b) 22 E. 4. 16. 4 E. 3. 33. 27 H. 6. 1. 2. 11 E. 3. Dec. 7.

(c) 49 Ass. 4. 38 E. 3. 12.

(d) 12 E. 3. Vouch. 94. 35 H. 6. 33.

Pl. Com. 515.

(e) 17 E. 3. tit. Recover in value 33. 1 E. 3. 12. 3 E. 3. Judgm. 222. 14 E. 3. ib. 160. 10 E. 3. 52. 18 E. 3. 51. Lib. 1. fol. 96. Shelleyes case.

(f) 32 E. 3. Vouch. 94. per Greene.

(g) Vide Pl. Com. fol. 514

(h) 17 E. 3. 59 20 E. 3. Vouch. 129. 38 E. 3. Vouch. 94. 5 H. 7. 2.

(i) 11 H. 7. 12. 11 E. 2. tit. Det. 7. Dy. 5. El. 238.

(k) 11 H. 7. 12.

(l) 24 E. 3. 36. 27 E. 3. 86. 108. 38 E. 3. 26. 40 E. 3. 5. 37 H. 8. Br. Nosme. 1. & 40. & tit. Done & Rem. 61.

vanty, and the other sons in respect of the inheritance descended unto them. (c) And in like sort, the Heir at the Common Law, and the heir of the part of the mother shall be vouched. But the heir at the Common Law may be vouched alone in both these cases, at the election of the Tenant, & sic de similibus. (d) In the same manner if a man dieth seised of certain lands in fee, having issue a son and a daughter by one Venter, and a son by another, the eldest son entreth and dieth, the land descends to the Sister; In this case the Warranty descendeth on the son, and he may be vouched as Heir, and the Sister, as Heir of the Land. In which and the other case of Burrough English, the son and heir by the Common Law having nothing by discent, the whole losse of the recovery in value lieth upon the Heires of the Land, albeit they be no Heires to the Warranty. Then put the case that there is a Warranty Paramount, who shall deraign that Warranty? and to whom shall the recompence in value go? Some have said, That as they are vouched together, so shall they avouch over, and that the recompence in value shall enure according to the losse, and that the effect must pursue the cause, as a recovery in value by a Warranty of the part of the mother shall go to the Heir of the part of the mother, &c.

Some others hold, That it is against the Maxim of the Law, that they that are not Heirs to the Warranty should joyn in Voucher, or to take benefit of the Warranty which descended not to them, but that the Heir at the Common Law, to whom the Warranty descended, shall deraign the Warranty, and recover in value, and that this doth stand with the rule of the Common Law.

Others hold the contrary, and that this should be both against the rule of Law, and against reason also; for by the rule of Law (e) the Voucher shall never sue to have execution in value, until execution be sued against him. But in this case Execution can never be sued against the Heir at the Common Law, therefore he cannot sue to have execution over in value. Secondly, It should be against reason, that the Heir at the Common Law should have totum lucrum, and the special Heirs totum damnum. I finde in our Books, (f) that this reason is pleaded, that the special Heir should not be vouched only; For (say they) if the special Heirs should be vouched only, then could not they deraign the Warranty over, which should be mischievous, that they should lose the benefit of the warranty, if they should be vouched only. But if the Heir at the Common Law were vouched with them (as by the Law he ought) all might be saved; and therefore study well this point how it may be done.

(g) If Tenant in general Taile be, and a common recovery is had against him and his wife, where his wife hath nothing, and they vouch, and have judgement to recover in value, Tenant in Taile dieth, and the wife surviveth; for that the Issue in Taile had the whole losse, the recompence shall enure wholly to him, and the wife, albeit she was partie to the judgement, shall have nothing in the recompence, for that she loseth nothing.

(h) If the Bastard signe enter and take the profits, he shall be vouched only, and not the Bastard & the Mother, because the Bastard is in apparance Heir, and shall not disable himself.

(i) If a man be seised of Lands in Gavelkind, and hath issue three sons, and by Obligation bindeth himself and his heires and dieth, an action of Debt shall be maintainable against all the three sonnes, for the Heir is not chargeable unless he hath lands by discent.

(k) So if a man be seised of Land on the part of his mother, and bind himself and his Heirs by Obligation, and dieth, an Action of Debt shall lie against the Heire on the part of the mother, without naming of the Heire at the Common Law. And so note a diversity between a personal lien of a Bond, and a real lien of a Warranty.

Sect. 719.

HEre it appeareth, That (l) a henfore by the Ancestors hath any estate of Freehold, a limitation after in the same Conveyance to any of his Heirs, are words of limitation, and not of purchase, albeit in words it be limited by way of remainder: and therefore where the remainder, to the Heirs Females vesteth in the Tenant in Taile himself.

NOta, sitre soit done a vn home, & a les heires males de son corps engendres, & pur default de tiel Issue, le rem ent a ses heires females de son corps engendres, & puis le Donè

NOte, if Land be given to a man and to the heirs males of his body begotten, and for default of such Issue the Remainder thereof to his Heires females of his body begotten, and after the

donée en le taile fait feoffment en fée ouelque Garrantie accordant, & ad iſſue fits et file et mozuſt, cel Garrantie neſt forſque lineal Garrantie a le fits a demaunder per briefe de Formedon en le diſcender, & aury il neſt forſque lineal a le file, a demaunder meſme la terre per briefe de Formedon en le remainder, ſinon frere deuiaſt ſans iſſue male, pur ceo que el claime come heire female de la corps ſon pere engendres. Mes en ceſt cas, ſi ſon frere en ſa vie releaſaſt al diſcontinuée, &c. oue garrantie, &c. & puis moruſt ſauns iſſue, ceo eſt vn collateral garrantie a le file, pur ceo que el ne puit conueyer a luy le droit que el ad per force de le remaynder per aſcun meane de diſcent per ſon frere, pur ceo que le frere eſt collateral a le title ſa ſoer, & pur ceo ſon Garrantie eſt collateral, &c.

donee in tayle maketh a Feoffement in fee, with Warrantie accordingly and hath iſſue a ſon and a daughter and dieth, this warranty is but a lineal warrantie to the ſonne to demand by a Writ of *Formedon* in the diſcender, and alſo it is but lineal to the daughter to demand the ſame Land by Writ of *Formedon*, in the remaynder, unleſs the brother dieth without iſſue male, becauſe ſhe claimeth as heir female of the body of her father ingendred. But in this caſe, if her brother in his life releaſe to the diſcontinuee, &c. with Warranty, &c. and after dieth without iſſue this is a collateral warrãty to the daughter, becauſe ſhe cannot convey to her the right which ſhe hath by force of the remainder by any means of diſcent by her brother, for that the brother is collateral to the title of his ſiſter, and therefore his warranty is collateral, &c.

knowen, that for Learning ſake, and to find out the reaſon of the Law, theſe limitations to the heires males of the bodie, and after to the heires females of the body may be put, but it is dangerous to uſe them in conveyances, for great inconveniencies may ariſe thereupon, for if ſuch a Tenant in tayle hath iſſue diuers ſons, and they have iſſue diuers daughters, and likewiſe if Tenant in taile hath iſſue diuers daughters, and each of them hath iſſue ſonnes, none of the daughters of the ſons, nor the ſonnes of the daughters ſhall ever inherit to either of the ſaid eſtates tayle: and ſo it is of the Iſſues of the Iſſues, for that (as hath bin ſaid) the Iſſues inheritable muſt make their claime either only by Males, or only by Females, ſo as the females of the males, or males of the Females are wholly excluded to be inheritable to either of the ſaid Eſtates tayle: but where the firſt limitation is to the heires Males, let the limitation be, for default of ſuch iſſue to the heires of the body of the Donée, and then all the Iſſues, be they Females of Males, or Males of Females are inheritable.

1 H. 6. 4. 11 H. 6. 13. 14. 28 H. 6. Deviſ. 18. Statham. Deviſe. Pl. Com. 41. 430 H. 6. 43. Vid Lit. ca. taile, Sect. 34. 37 H. 8. Br. doue & rem. 61. & tit. noſme 1. & 40.

If a man give Lands to a man, to have and to hold to him and the heirs Males of his body, and to him and to the heirs Females of his body, the eſtate to the heires Females is in remainder, and the daughters ſhall not inherit any part, ſo long as there is Iſſue Male, for the eſtate to the heirs Males is firſt limited, and ſhall be firſt ſerved, and it is as much to ſay, and after to the heires Females, and Males in conſtruction of Law are to be preferred.

Sect. 720.

¶ Item, ieo ay oye dire que en temps le Roy Richard le ſecond, il y fuit vn Juſtice del Common banke, demurrant en Kent, appel Richel, que auoit iſſue diuers fits, & ſon entent fuit, que ſon eigne fits aueroit certaine terres & tenements a luy, & a les heires de ſon corps engendres, & pur default diſſue, le remainder a le ſecond fits, &c. & iſſint a l'tierce fits, &c. & pur ceo que il voile que nul de les fits alieneroit, ou ſerroit garrantie purbarrer ou leder les auters, queux ſerront en le remainder, &c. il fit faire tiel Indenture, a tiel effect, c'eſt aſcauoir, que les terres & tenements fueront dones a ſon eigne fits ſur tiel condition que ſi eigne fits aliena en fee, ou en fee taile, &c. ou ſi aſcun de ſes fits alienaſt, &c. que adonque lour eſtate ceſſera, & ſerroit void, & que adonque meſmes les terres & tenements immediate remaindront a le ſecond fits, & a les heires de ſon corps engēdres, & ſic ultra, le remainder as auters de ſes fits, & liuery de ſeiſin fuit fait accordant.

ALſo I have heard ſay, that in the time of King *Richard* the ſecond, there was a Juſtice of the Common Place dwelling in *Kent*, called *Richel*, who had iſſue divers ſonnes, and his intent was that his eldeſt ſonne ſhould have certain Lands and Tenements to him and to the heires of his bodie begotten, and for default of iſſue, the remainder to the ſecond ſon, &c. and ſo to the third ſonne, &c. and becauſe he would that none of his ſons ſhould alien or make Warranty to bar or hurt the others that ſhould be in the remainder, &c. he cauſeth an indenture to be made to this effect, *viz.* That the Lands and Tenements were given to his eldeſt ſon upon ſuch condition that if the eldeſt ſon alien in fee or in fee taile, &c. or if any of his ſons alien, &c. that then their eſtate ſhould ceaſe and be void, and that then the ſame Lands and Tenements immediately ſhould remain to the ſecond ſon, and to the heires of his body begotten, *& ſic ultra*, the remainder to his other ſonnes, and livery of ſeiſin was made accordingly.

¶ *Ieo ay oye dire, &c.* Thoſe things that one hath by credible hearſay, by the example of our Anthors are worthy of obſervation. This invention deviſed by Juſtice Richel in the reign of King Richard the ſecond; who was an Iriſhman born, and the like by Thirning Chief Juſtice in the reign of Henry the fourth, were both full of imperfections, for Nihil ſimul inventum eſt & perfectum, and Sæpe viatorem nova non vetus orbita tallit. And therefore new inventions in Aſſurances are dangerous. And hereby it may appear, that it is not ſafe for any man (be he never ſo learned) to be of counſel with himſelf in his own caſe, but to take advice of other great and learned men.

21 H. 6. f. 33. 1. 6. f. 4. a. b. Sir Anthony Mildmayes caſe.

Non proſunt Dominis quæ proſunt omnibus, artes.

And the reaſon hereof is, in ſuo quiſque negotio hebetior eſt, quàm in alieno.

(m) And the ſame Judge in his own name, &c. brought an Action upon his caſe againſt others, and obtained a verdict, ſo as the right of the cauſe was tryed on his ſide, yet for that upon his own ſhewing in his Count his Action did not lye, Ex aſſenſu omnium Juſticiariorum præter querentem Richel, judgement was given againſt him; but let us now leave this Judge for example to others, and let us return to our Author.

(m) 2 H. 4. fol. 11. in Action ſur le caſe.

Sect.

Sect. 721.

¶ Mes il semble per reason, que touts tiels remainders en la forme auantdit sont voides & de nul value, & ceo pur trois causes. Un cause est, pur ceo que chescun remainder q̃ commence p̃ vn fait, il couient que le remainder soit en luy a que le remainder est tayle per force de mesme le fait, auant liuerie de seisin est fait a luy que auera le franktenement, car en tiel case le nessance & le estre de le remainder est per le liuery de seisin a celuy que auera le franktenement, et tiel remainder ne fuit al second fits, al temps de liuery de seisin en le cas auantdit, &c.

But it seemeth by reason, that all such remainders in the form aforesaid are void and of no value, and that for three causes. One cause is, for that every remainder which beginneth by a Deed, it behooveth that the remainder be in him to whom the remainder is entailed by force of the same Deed, before the livery of seisin is made to him which shal have the freehold, for in such case the growing and the being of the remainder is by the livery of seisin to him that shall have the freehold, and such remainder was not to the second sonne at the time of the livery of seisin in the case aforesaid, &c.

¶ Here our Author is of opinion, that these Remainders in the forme aforesaid, are void and of no value for three causes.

¶ *Vn cause est, &c.* Here he setteth down a rule concerning Remainders, viz. Every remainder which commenceth by a Deed ought to rest in him to whom it is limitted, when Livery of seisin is made to him that hath the particular estate.

First, Littleton saith by Deed, (o) because if Lands be granted and rendred by Fine for life, the remainder in tail, the remainder in fee, none of these remainders are in them in the remainder until the particular estate be executed.

(o) 7 R.2. Scire fa.

Secondly, that the remainder be in him, &c. at the time of the Livery. This is regularly true, but yet it hath divers exceptions. First, unless the person that is to take the remainder be not in rerum natura, (o) as if a Lease for life be made, the remainder to the right heires of I. S. I. S. being then alive, it sufficeth that the inheritance passeth presently out of the Lessour, but cannot rest in the heir of I. S. for that living his father he is not in rerum natura, for non est hæres viventis, so as the remainder is good upon this Contingent, viz. if I. S. die during the life of the Lessee.

(o) 32 H.6. tit. Feoffments & faits, 69. 27 E.3. 87. 11 R.2. Detinue, 46. 2 H. 7. 13. 12 H.7. 27. 12 E.4. 2. 21 H.7. 11. 7 H.4. 23. 11 H.4. 74. 18 H.8. 3. 27. H.8. 42. 38 E.3. 26. 301 Ass. 47 E.3. qu. Jur. dam. 20.

(p) And so it is if a man make a Lease for life to A. B. and C. and if B. survive C. then the remainder to B. and his heires. Here is another exception out of the said rule, for albeit the person be certain, yet inasmuch as it depends upon the dying of B. before C. the remainder cannot rest in C. presently. And the reason of both these cases in effect is, because the remainder is to commence upon limitation of time, viz. upon the possibility of the death of one man before another, which is a common possibility.

(p) Pl. Com. in Colthirst case, fol. 25. 29.

A man letteth Lands for life upon condition to have fee, and warranteth the Land in forma prædicta, afterward the Lessee performeth the Condition, whereby the Lessee hath fee, the warranty shall extend and increase according to the state. And so it is in that case if the Lessor had died before the performance of the Condition, the warranty shall rise and increase according to the estate, and yet the Lessor himself was never bound to the warranty, but it hath relation from the first Livery. And by this it appeareth that a warranty being a Covenant real executory may extend to an estate in futuro, having an estate, whereupon it may work in the beginning. But if a man grant a Seigniory for years upon Condition to have fee with a warranty

Warranty in forma prædicta, and after the Condition is perfozmed, this ſhall not extend to the fee, becauſe the firſt eſtate was but foz years, which was not capable of a Warranty. And ſo it is, if a man make a Leaſe foz years, the remainder in fee, and warrant the Land in forma prædicta, he in the remainder cannot take benefit of the Warranty, becauſe he is not party to the Deed, and immediately he cannot take, if he were party to the Deed, becauſe he is named after the Habendum, and the eſtate foz years is not capable of a Warranty. And ſo it is if Land be given to A. and B. ſo long as they ioyntly together liue, the remainder to the right heires of him that dieth firſt, and warrant the Land in forma prædicta, A. dieth, his heir ſhall have the warranty, and yet the remainder veſted not during the life of A. foz the death of A. muſt pzecede the remainder, and yet ſhall the heir of A. have the Land by diſcent.

Sect. 722.

SI le primer fits alienaſt, &c. By the alienation of the Donee two things are wzought:

Firſt, the Franktenement and fee is in the Alienee.

Secondly, the Reuerſion is deueſted out of the Donoz.

(q) 21 H.7.11.27 H.8.24 (q) And therefoze by the alienation that transferreth the freehold and fee ſimple to the Alienee there can no remainder be raiſed and veſted in the ſecond ſonne.

(r) 6 R.2. quid juris clam. 20. (r) As if a man make a Leaſe foz life upon Condition that if the Leſſoz grant ouer the Reuerſion, that then the Leſſee ſhall have fee, if the Leſſoz grant the Reuerſion by Fine, the Leſſee ſhall not have fee, foz when the Fine tranſferreth the fee to the Conuſee, it ſhould be abſurd, and repugnant to reaſon, that the ſame Fine ſhould wozk an eſtate in the Leſſee, foz one alienation cannot veſt an eſtate of one and the ſame Land to two ſeueral perſons at one time.

Argumentum ex abſurdo.

In a mans owne grant, which is euer taken moſt fozcibly againſt himſelfe, the reaſon of Littleton doth hold, foz it hath been reſolued by the Juſtices (ſ) that if a man ſeiſed of an Aduowſon in fee by his Deed granteth the next preſentation to A. and before the Church becommeth void, by another Deed grant the next preſentation of the ſame Church to B. the ſecond grant is void, foz A. had the ſame granted to him before, and the Grantee ſhall not have the ſecond auoydance by conſtruction, to have the next auoydance, which the Grantoz might lawfully grant, foz the grant of the next auoydance do not import the ſecond preſentation; (t) But if a man ſeiſed of an Aduowſon

(ſ) 20 H.8. Preſentments al Egliſer. Br. 52. 33 H.8. ibid. 55. 29 H.8. Dier. 35. 11 Eliz. 282, 283.

(t) 15 H.7.7. 19 E.3. quar. Imp. 154.

LE ſecondcauſe eſt, ſi le primer fiſs alienaſt les tenements en fee, adonques eſt le franktenement, et le fee ſimple en lalienee, et en nul auter, et ſi le donour auoit aſcun reuerſion, per tiel alienation le reuerſion eſt diſcontinue, donques coment per aſcun reaſon poit ceo eſtre, que tiel remainder commencera ſon eſtre, & ſon neſſance immediate apres tiel alienation fait a vn eſtrange, que ad per meſme lalienation franktenement, & fee ſimple, &c? Et auxy ſi tiel remainder ſerroit bone, adonques purroit il enter ſur lalienee, lou il nauoit aſcun maner de droit auant lalienation, que ſerra inconuenient.

THE ſecond cauſe is, if the firſt ſonne alien the Tenements in fee, then is the freehold and the fee ſimple in the Alienee, and in none other, and if the Donor had any Reverſion, by ſuch alienation the Reverſion is diſcontinued, then how by any reaſon may it be, that ſuch remainder ſhall commence his being and his growing immediately after ſuch alienation made to a ſtranger, that hath by the ſame alienation a freehold and fee ſimple, &c? And alſo if ſuch remainder ſhould be good, then might he enter upon the Alienee, where he had no manner of right before the alienation, which ſhould be inconvenient.

ſon in fee take wife; now by act in Law is the wife intitled to the third preſentation, if the huſband die before: the huſband grant the third preſentation to another, the huſband die, the heir ſhall preſent twice, the wife ſhall have the third preſentation, and the Grantee the fourth, for in this caſe it ſhall be taken the third preſentation, which he might lawfully grant, and ſo note a diverſity between a title by act in Law, and by act of the party, for the act in Law ſhall work no preiudice to the Grantee.

¶ *Auxi ſi tiel remainder ſerroit bone, &c.* The force of this argument is, that ſeeing the eſtate of the Alienee (albeit the words of the Condition be, that the ſtate ſhould ceaſe and be void) being an eſtate of inheritance in lands or tenements cannot ceaſe or be void before the ſtate be defeated by entry, then if this remainder ſhould be good, then muſt it give an entry upon the Alienee to him that had no right before, which ſhould be againſt the expreſs rule of Law, viz. that an entry cannot be given to a ſtranger to avoid a voydable act, as before hath been ſaid in the Chapter of Conditions.

¶ *Le quel ſerr' enconvenient.* Here note three things. Firſt, that whatſoever is againſt the rule of Law is inconvenient. Secondly, that an argument Ab inconvenienti is ſtrong to prove it is againſt Law, as often hath been obſerved. Thirdly, that new inventions (though of a learned Judge in his own profeſſion) are full of inconvenience, Periculoſum eſt res novas & muſitatas inducere. Vid. Sect. 87, &c.

Eventus varios res nova ſemper habet.

Sect. 723.

¶ A tierce cauſe eſt, quant la condition eſt tiel, que ſi leigne fits alienaſt, &c. que ſon eſtate ceſſera ou ſerroit void, &c. donqz apres tiel alienation, &c. poit le donoz enter per force de tiel condition, com il ſemble, & iſſint le Donoz ou ſes heires en tiel caſe doient pluis toſt auer la fre que le ſecond fits, que nauoit aſcun droit deuant tiel alienation, & iſſint il ſemble que tiels remainders en le cas auantdit ſont voides.

THe third cauſe is, when the condition is ſuch, that if the eldeſt ſonne alien, &c. that his eſtate ſhall ceaſe or be void, &c. then after ſuch alienation, &c. may the Donor enter by force of ſuch condition as it ſeemeth, and ſo the Donor or his heires in ſuch caſe ought ſooner to have the land than the ſecond ſonne, that had not any right before ſuch alienation, and ſo it ſeemeth that ſuch remainders in the caſe aforeſaid are void.

¶ HEre it is to be obſerved, that part of the condition that prohibiteth the alienation made by Tenant in taile is good in Law with ſuch diſtinction as hath been before ſaid in the Chapter of Conditions. And the conſequent of the Condition, viz. that the Lands ſhould remain to another, &c. is void in Law, and by the opinion of Littleton the Donor may re-enter for the Condition broken, for utile per inutile non vitiatur. which being in caſe of a Condition for the defeating of an eſtate, is worthy of obſervation.

And it is to be noted, that after the death of the Donor, the Condition deſcendeth to the eldeſt ſonne, and conſequently his alienation doth extinguiſh the ſame for ever, wherein the weakneſſe of this invention appeareth, and therefore Littleton here ſaith, that it ſeemeth that the Donor may re-enter, and ſpeaketh nothing of his Heirs. A man hath iſſue two ſonnes, and maketh a Gift in taile to the eldeſt, the Remainder in fee to the puiſne, upon condition, that the eldeſt ſhall not make any Diſcontinuance with warrantie to barre him in the Remainder, and if he doth that then the puiſne ſonne and his heires ſhall re-enter, the eldeſt make a Feoffment in Fee with Warranty, the father dieth, the eldeſt ſonne dieth without iſſues, the puiſne may enter: but if the Diſcontinuance had been after the death of the father, the puiſne could not have entred. In this caſe ſome poines are to be obſerved. Firſt, as Littleton here ſaith, the Entry for the breach of the Condition is given to the father, and not to the puiſne ſon. Secondly, that by the death of

41 E.3. fol.

Vide Sect. 446.

of the Father the condition deſcends to the elder Sonne, and is but ſuſpended, and is reuiued by the death of the eldeſt Sonne without Iſſue, and deſcendeth to the youngeſt Sonne. Thirdly, That the Feoffment made in the life of the Father cannot give away a Condition that is Collateral, as it may do a right. Fourthly, That a warranty cannot binde a title of Entry for a Condition broken, (as hath been ſaid) but if the diſcontinuance had been made after the death of the Father, it had extinct the Condition: which caſe is put to open the reaſon of our Authors opinion.

In theſe laſt three Sections our Author hath taught us an excellent point of Learning, That when any innouation or new invention ſtarts up, to try it with the Rules of the Common Law, (as our Author here hath done) for theſe be true Touchſtones to ſever the pure gold from the droſs and ſophiſtications of novelties & new inventions. And by this example you may perceive, That the rule of the old Common Law being ſoundly (as our Author hath done) applyed to ſuch novelties, it doth utterly crush them and bring them to nothing; and commonly a new invention doth offend againſt many rules and reaſons (as here it appeareth) of the Common Law; and the antient Judges and Sages of the Law have ever (as it appeareth * in our Books) ſuppreſſed innovations and novelties in the beginning, as ſoon as they have offered to creep up, leſt the quiet of the Common Law might be diſturbed: and ſo have (a) Acts of Parliament done the like, whereof by the authorities quoted in the margent, you may in ſtead of many others, upon this occaſion take a little taſte. But our excellent Author in all his three Books hath ſaid nothing but Ex veterum ſapientium ore & more.

* 31 E.3. Cager deliverance 5. 22 Aſſ. 12. 38 E.3. 1, 2 H.4. 18, &c.

(a) 1 E.3. cap. 15. Stat. 3. 18 E.3. cap. 1. & 6. 4 H.4. ca. 2 11 H.6. c. 2 3. 12 E.4. cap. 8, &c.

Sect. 724,725.

¶ Item, a le Common Ley deuant leſtatute de Glouceſter, ſi tenant per le Curteſie dit alien en fee ouelque Garrantie, apres ſon deceaſe ceo fuit vn barre al heire, ſicome appiert per les parols de meſme leſtatut: mes il eſt remedy p meſme leſtatute, que le Garrantie de le Tenant per le Curteſie, ne ſert my bar al hire, ſinon que il y ad aſſets per diſcent per le tenant per le curteſie, car deuant le dit eſtatute, ceo fuit vn Collateral Garrantie al hire, pur ceo que il ne puiſſoit conueyer aſcun title de Diſcent a les tenements per le tenant p le Curteſie, mes tantſolement per ſa mere, ou auters de ſes anceſtors, & ceo eſt le cauſe pur que il fuit Collateral Garrantie.

ALſo at the Common Law before the Statute of Glouceſter, if tenant by the Curteſie had aliened in Fee with Warranty, after his deceaſe this was a barre to the Heire, as it appeareth by the words of the ſame Statute: but it is remedied by the ſame Statute, That the Warranty of Tenant by the Curteſie ſhall be no barre to the Heire, unleſs that he hath Aſſets by Diſcent by the Tenant by the Curteſie, for before the ſaid Statute this was a Collateral Warranty to the Heire, for that he could not convey any title of Diſcent to the tenements by the tenant by the Curteſie, but only by his mother, or other of his Anceſtors, and this is the cauſe why it was a Collateral Warranty.

Sect. 725.

¶ Mes ſi home enherit mes feme, les queux ont fits enter eux, & le pier deuie, & le fits

BUt if a man Inheritor taketh wife, who have iſſue a ſonne between them, and the father di-

fits entra en la Terre, & endowa ſa mere, & puis le mere alien ceo que ci ad en ſa Dower, a vn auter en Fée oue Garrantie accordant; & puis morust, & le Garrantie diſcendiſt a le fits, ore le fits ſerra barre a demaunder meſme la Terre p̄ cauſe de la dit Garrantie, pur ceo que tiel collateral Garrantie de Tenaunt en Dower neſt pas remedie per aſcun Eſtatute. Meſme la Ley eſt lou Tenaunt a terme de vie fait vn Alienation oueſque Garrantie, &c. & morust, & le Garrantie diſcendiſt a celuy que auoit le reuerſion ou le remainder, ils ſerront barres per tiel Garrantie.

eth, and the ſonne entreth into the land, and endow his mother, and after the mother alieneth that which ſhe hath in Dower to another in Fee with Warranty accordant, and after dieth, and the Warranty deſcendeth to the ſonne, now the ſon ſhall be barred to demand the ſame Land by cauſe of the ſaid Warranty, becauſe that ſuch Collateral Warranty of Tenaunt in Dower is not remedied by any Statute. The ſame Law is it, where Tenant for life maketh an Alienation with Warranty, &c. and dieth, and the Warranty deſcendeth to him which hath the reverſion or the rem', they ſhall be barred by ſuch Warranty.

¶ Of this and the ſubſequent Section ſufficient hath been ſaid before in this Chapter, Sect. 697.

¶ *Neſt pas remedie per aſcun Statute.* But by a Statute made ſince, this Caſe is remedied, as you ſée before, Sect. 697.

Sect. 726.

ITem, en le dit Caſe, ſi iſſint fuit que quant le Tenant en Dower alienaſt, &c. ſon heire fuit deins age, & auxy al temps que le Garrantie diſcendiſt ſur luy, il fuit deins age, en ceſt cas lheire poit apres enter ſur lalienée, nient contriſteant le Garrantie diſcendiſt, &c. p̄ ceſt nul lacheſſe ſerra adiudg' en lheire deins age que il nentra pas ſur lalienée en la vie le tenant en dower. Mes

ALſo in the Caſe aforeſaid, if it were ſo that when the Tenant in Dower alienedd, &c. his Heir was within age, and alſo at the time that the Warrantie deſcended upon him he was within age, In this Caſe the Heir may after enter upon the Alienee, notwithſtanding the Warranty deſcended, &c. becauſe no Lacheſſe ſhall be adjudged in the Heir within age, that he did not enter upon the Alienee in the life

HEre note this diverſitie, if the heire be within age at the time of the Diſcent of the Warranty, he may enter and avoid the Eſtate either within age, or at any time after his full age: And Littleton ſaith well, That the Infant in this Caſe may enter upon the Alienee, for if he bring his Action againſt him, he ſhall be barred by this Warrantie, ſo long as the ſtate whereunto the Warranty is annexed continue, and be not defeated by entry of the heire: but if he be within age at the time of the Alienation with Warrantie, and become of full age before the Diſcent of the Warranty, the Warranty ſhall barre him for ever. Our Authors putteth his caſes where the Entry of the Infant is lawful; (a) for where the entry of the Infant is not lawfull

18 E.4.13. 35 H.6. 63 28 Aſſ. 28. 32 E.3. Gar. 30.

35 H.6.63.

(a) 3 H.7.9. 35 H.6.63. Br. tit. War. 54. 33 H.8. tit. War. Br. 84. Lib. 1. fol. 67. a. in Archers caſe, & 4 a. Chudleyes caſe.

full when the Warrantie deſcendeth, the warrantie doth binde the Enfant, as well as a man of full age, and the reaſon thereof is, becauſe the eſtate whereunto the warrantie was annexed, continueth and cannot be avoided but by Action, in which Action the Warranty is a barre: and for the ſame reaſon likewiſe it is of a Feme Covert, if her entry be not lawful, a Warrantie deſcending on her during the Coverture, doth bind her.

(w) 18 E. 3. 3.

(w) And albeit the Husband be within age at the diſcent of the Warranty, yet if the entry of the wife be taken away, the warranty ſhall bind the wife.

(q) 20 E. 3. Audit. quær. 27. F. N. B. 104. k. 6 E. 3. 39. 17 E. 3. 76. 17 Aſſ 53. 17. 21 E. 2. 4. 13 E. 3. Aud. quær 26. 18 E. 3. Infant 61. 16 H. 7. 5. 15 E. 2. 5. 8 H. 6. 30. 1 H. 7. 15.

(q) And herein a diverſitie is to be obſerved between matters of Record done or ſuffered by an Enfant, and matters in Fait, for matters in Fait he ſhall avoid either within age, or at full age, as hath been ſaid: but matters of Record, as Statutes Merchants, and of the Staple, Recognizances acknowledged by him, or a Fine levied by him, recovery againſt him by default in a real Action (ſaving in Dower) muſt be avoided by him, viz. Statutes, &c. by Audita querela, and the fine and recovery by Writ of Error during his minority, and the like. And the reaſon thereof is, becauſe they are judicial Acts, and taken by a Court or a Judge, therefore the nonage of the Party, to avoid the ſame, ſhall be tried by inſpection of Judges, and not by the Countrey. And for that his nonage muſt be tried by inſpection, this cannot be done after his full age: and ſo is the Law clearly holden at this day, though there be ſome difference in our Bookes. But if the age be inſpected by the Judges, and recorded that he is within age, albeit he come of full age before the reverſal, yet may it be reverſed after his full age.

6 H. 8. Sauer de default Br. 50. 3 H. 6. 10. 1 Mar. Dy. 104.

* Paſch. 13. Ja. R. in the Kings Bench.

* And ſo was it reſolved by the whole Court of Kings Bench in the caſe of Kekewiche.

If Lands had been given to the husband and wife and their heires, and the Husband had made a Feoffment to another, to whom a Collateral Anceſtor of the wife had releaſed and died, and the Husband died, (and this had been before the Statute of 32 H. 8.) this Warranty had ſo bound her waiveable right, as ſhe could not waive her eſtate, and claim Dower. Otherwiſe it is of an Eſtate determined: for if a Biſhop make a Leaſe to the Husband and Wife during the life of the Husband, and the Husband dieth, ſhe may diſagree to this Eſtate determined, to ſave her ſelf from dammages. And ſo note a diverſity between an eſtate determined and an eſtate bound by Warranty.

si lhẽ fuit deins age al temps del alienation, &c. & puis il deuient al pleine age en la vie de le tenant en Dower, & illint eſteant de pleine age, il nentra pas ſur laliené en la vie de le tenant en Dower, & puis le Tenaunt en Dower mozuſt, &c. la peraduenture lhẽ ſerra barre per tiel Garrantie, pur ceo que il ſerra recte ſa follie, que il eſteant de pleine age, ne entra pas en la vie de le Tenaunt en Dower, &c.

of Tenant in Dower. But if the Heire were within age at the time of the alienation, &c. and after he commeth to full age in the life of Tenant in Dower, and ſo being of full age he doth not enter upon the Alienee in the life of Tenant in Dower, and after the Tenant in Dower dieth, &c. there peradventure the Heire ſhall be barred by ſuch Warranty, becauſe it ſhall be accounted his folly, that he being of full age did not enter in the life of Tenant in Dower, &c.

¶ *Nul laches ſerra adiudge en le Heire deins age.* Laches, or Laſches is an old French word for ſlackneſs, or negligence, or not doing. And the Rule (That no negligence ſhall be adjudged in an Enfant) is true, where he is thereby to be barred of his entry in reſpect of a former right, as by a Diſcent, or of his former right, (as Littleton doth here put an example) by a Warranty where his Entry is congeable. But otherwiſe it is of Conditions, charges and penalties going out of, or depending upon the original Conveyance, for the Laches or negligence ſhall be adjudged in thoſe caſes as well in the Infant as in any other.

(y) Pl. Com. Stowels caſe. 365 &c.

(y) Vide Pl. Com. Stowels Caſe per totum. And ſee further there, where an Infant being tenant for life or years, ſhall be puniſhed for doing or ſuffering of waſte; and where he claimeth by purchaſe, a Ceſſavit ſhall lie againſt him, if he pay not his Rent by two yeares. And ſome have ſaid, If he be the Tenancy by diſcent, and he himſelf ceaſe, a Ceſſavit doth lie, and he ſhall not have his age becauſe it is of his own Ceſſer, 31 E. 3. Age 54. But other Bookes (as ſome conceive them) be againſt that: Vide 9. Edw. 3. 50. 28 E. 3. 99. 14 E. 3. Age 88. 2 E. 2. Age 133.

and

and others, which Books do not prove that the Cessavit doth not lye in that case, but the contrary, that he shall have his age to the end he may at his full age certainly know what to plead, or what arrerages to tender, for the Land was originally charged with the Seigniorie and Services.

Sect. 727.

¶ MEs ore per lestatute fait 11. H. 7. cap. 10. il est ordeine, si ascun feme discontinue, alien, release, ou confirme oue Garrantie ascun terres ou Tenements que el tient en dower pur terme de vie, ou en tayle del done sa primer baron, ou de ses Ancesters, ou del done dascun auter seisie al vse le primer baron, ou de ses Ancesters, que touts tiels Garranties, &c. serront voides, & que bn lirroit a cestuy que auoit ceux terres ou tenements apres la mort de mesme la feme dentrer.

BUt now by the Statute made 11. *H.* 7. *cap.* 10. it is ordained if any woman discontinue, alien, release or confirm with Warrantie any Lands or Tenements which she holdeth in Dower for term of life, or in taile of the gift of her first husband, or of his Ancestors, or of the gift of any other seised to the use of the first husband or of his Ancestours, that all such Warranties, &c. shall be void, and that it shall be lawful for him which hath these Lands or Tenements after the death of the same woman to enter.

¶ This is an addition to Littleton, and therefore to be passed over. And hereof sufficient hath been said before, Sect. 697.

Sect. 728.

¶ ITem, il est parle en le fine de le dit estatute de Glouc. que parle del alienation ouesque garrantie fait per le tenant per le curtesie en cest forme. Ensement, en mesme le manner ne soit theire la feme apres la mort le pere & le mere barre daction, si il demanda lheritage ou le mariage, sa mere per briefe Dentre, que son pere aliena en temps sa mere, dont nul fine est leuy en la Court le

ALso it is spoken in the end of the said Statute of *Glouc.* which speaketh of the alienation with Warranty made by the Tenant by the courtesie in this form. Also, in the same manner, the heir of the woman after the death of the father and mother shall not be barred of action, if he demandeth the heritage or the marriage of his Mother by Writ of Entry, that his father aliened in his mothers time,

¶ *Dont nul fine est leuy en le Court le Roy, &c.* Here are three things worthy of observation concerning the construction of Statutes. First, that (a) it is the most natural and genuine exposition of a Statute to construe one part of the Statute by another part of the same Statute, for that best expresseth the meaning of the makers. Where the question upon the generall words of the Statute is, whether a fine levied only by a husband seised in the right of his wife with warranty shall bar the heir without Assets. And it is well expounded by the former part of the 3d. whereby it is enacted, that alienation made by Tenant by the courtesie with warranty shall not bar the heir, unless Assets descend.

(a) Pl. Com. fol. 77, 7 E. 3. 39.

Vid. Bracton lib. 4 f. 321. Fleta lib. 5. cap. 34.

cend. And therefore it should be inconvenient to intend the Statute in such manner, as that he that hath nothing but in the right of his wife should by his fine levied with warrantie barre the heire without Assets. And this exposition is ex visceribus actus.

Secondly, The words of an Act of Parliament must be taken in a lawful and rightful sense, as here the words being (whereof no fine is levied in the Kings Court) are to be understood, whereof no fine is lawfully or rightfully levied in the Kings Court. And therefore (b) a fine levied by the husband alone, is not within the meaning of the Statute, for that fine should work a wrong to the wife, but a fine levied by the husband and wife is intended by the Statute, for that fine is lawful and worketh no wrong. (c) So the Statute of W. 2 cap. 5. saith (Ita quod Episcopus Ecclesiam conferat) is construed, Ita quod Episcopus Ecclesiam legitimè conferat, and the like in a number of other Cases in our Books. And generally the rule is, Quod non præstat impedimentum quod de jure non sortitur effectum.

(b) Pl. Com. 246. b. Seignior Barkleyes case. li. 9. fol. 26. in case del Abbot de Strata mercella.
(c) 11 H. 4. 8. 9 E. 4. 1. 21 H. 6. 28. 4 E. 4. 31. 12 H. 4. Formedon 15.

Thirdly, that construction must be made of a Statute in suppression of the mischief, and in advancement of the remedy, as by this Case it appeareth. For a fine levied by the husband only, is within the letter of the Law, but the mischief was, the heir was barred of the Inheritance of his mother, by the warranty of his father without Assets, and this act intended to apply a remedy, viz. that it should not barre unless there were Assets, and therefore the mischief is to be suppressed, and the remedy advanced. Et qui hæret in litera, hæret in cortice, as often before hath been said.

Cy ensuit le Roy: & issint p force de mesme lestatute, si le baron del feme aliena lheritage, ou mariage sa feme en fee oue Garrantie, &c. per son fait en pais, ceo est clere Ley, que cest Garranty ne barrera my heire, sinon que il nad Assets per discent.

whereof no fine is levied in the Kings Court. And so by force of the same Statute, if the husband of the wife alien the heritage or marriage of his wife in fee with Warrantie, &c. by his Deed in the Countrey, it is cleer Law, that this Warranty shall not bar the heir, unless he hath Assets by discent.

Sect. 729, 730, & 731.

Mes l' doubt est, si l' baron alienast lheritage sa feme, p fine leuy en la Court l'Roy ouesque Garrantie, &c. si ceo barrera lheire sans aucun discent en value. Et quant a ceo, ceo voile icy dire certaine reasons que ieo aye oye dit en cest matter. Ieo ay oye mon Master Sir Richard Newton, iades chiefe Justice de Common Banke, dire en touts en mesme le Banke, que tiel Garrantie que le baron fait per fine leuie en le Court le Roy, barrera lheire, coment que il ad eviens per discent, pur ceo que lestatute dit (dont nul fine est leuy en le Court le Roy) et issint per son opinion

But the doubt is, if the husband alien the heritage of his wife by fine levied in the Kings Court with Warrantie, &c. if this shall barre the heire without any discent in value. And as to this I will here tell certain reasons, which I have heard said in this matter. I have heard my Master Sir *Richard Newton*, late Chief Justice of the Common Pleas, once say in the same Court, that such Warrantie as the husband maketh by fine levied in the Kings Court shall barre the heir, albeit he hath nothing by discent, because the Statute saith (whereof no fine is levied in the Kings Court) and so by his

opinion cel garrantie per fine demurt vncore vn collateral Garrantie, come il fuit a le common ley, nient remedy per le dit eſtatute, pur ceo que le dit eſtatute except alienations per fine oue Garrantie.

opinion this Warranty by fine remaineth yet a collateral Warrantie as it was at the Common Law not remedied by the ſaid Statute, becauſe the ſaid Statute excepteth alienations by fine with Warranty.

Sect. 730.

¶ ET aſcuns auters ont dit, et vncore dient le contrarie, et ceo eſt lour proofe, que come per meſme le Chapiter de dit eſtatute il eſt ordeine, que le Garrantie le tenant per le curteſie ne ſerra my barre al heire, ſinon que il ad aſſets per diſcent, &c. coment que le tenant per le curteſie leuie vn fine de meſmes les Tenements oueſque Garrantie, &c. auxy forment come il poit faire, vncore cel Garranty ne barra my l'heire, ſinon que il ad Aſſets per diſcent, &c. & ieo croy que ceo eſt ley, & pur ceo ils dient, que ſerroit inconuenient dentender leſtatute en tiel forme, que vn home que nad riens forſque en droit ſa feme purroit per fine leuſe per luy de meſmes les Tenements queux il ad forſque en droit ſa feme oue Garranty, &c. barre l'heire de meſmes les Tenements ſans aſcun diſcent de fee ſimple, &c. lou le tenant per le curteſie ceo ne puit faire.

AND ſome others have ſaid, and yet do ſay the contrary, and this is their proof, that as by the ſame Chapter of the ſaid Statute it is ordained that the Warrantie of the tenant by the courteſie ſhall be no barre to the heir, unleſs that he hath Aſſets by diſcent, &c. although that the tenant by the courteſie levy a fine of the ſame tenements with Warrantie, &c. as ſtrongly as he can, yet this Warranty ſhall not barre the heire, unleſs that he hath Aſſets by diſcent, &c. And I believe that this is Law, and therefore they ſay, that it ſhould be inconvenient to intend the Statute in ſuch maner, as a man that hath nothing but in right of his wife might by fine levied by him of the ſame Tenements which he hath but in right of his wife with Warrantie, &c. barre the heire of the ſame Tenements without any diſcent of fee ſimple, &c. where the Tenant by the courteſie cannot do this.

Sect. 731.

¶ MES ils ont dit, que le ſtatute ſerra entend ſolonq; cel forme, s. lou le Statute dit, dont nul fine eſt leuie en Court le Roy, ceo eſt adire, dont nul loial fine

BUt they have ſaid that the Statute ſhall be intended after this manner, s. where the Statute ſaith, whereof no fine is levied in the Kings Court, that is to ſay,

fine eſt droiturelment leuy en la Court le Roy, ceo eſt adire, dont nul loial fin eſt droiturelmẽt leuy en la court le Roy: Et ceo eſt dont nul fine de le baron & ſa feme ſoit leure en le Court le Roy, car al temps de le ſelans del dit eſtatute, cheſcun eſtate de terres ou tenements que aſcun home ou feme auoit, que diſcenderoit a ſon heire, fuit fée ſimple ſans condition, ou ſur certaine conditions en fait, ou en ley. Et pur ceo que adonques tiel fine poit droiturelment eſtre leuie per le baron & ſa feme, & les heires le baron garronteront, &c. tiel garrantie barrera lheire, & iſſint ils dient que ceſt lentendement de leſtatute, car ſi le baron & ſa feme fieront un feoffement en fée per fait en pais, ſon heire apres le deceaſe le baron et ſa feme auera briefe Dentre ſur Cui in vita, &c. nient obſtant le garrantie de le baron, donque ſi nul tiel exception fuit fait, en leſtatute de le fine leuie, &c. donque lheire aueroit le briefe Dentre, &c. nient obſtant le fine leuie per le barõ & ſa feme, pur ceo que les paroir de leſtatute deuant lexception de fine leuie, &c. ſont generals, &c. ceſtaſcauoir que lheire la feme apres le mort le pere et la mere ne ſoit barr̃ daction, ſil demaund lheritage, ou le mariage ſa mere, per briefe Dentre, que ſon pere aliena en temps ſa mere, & iſſint comẽt que le baron & la feme alienent per fine, vncore ceo eſt voier, que le barõ aliena en temps la mere, et iſſint il ſerroit en caſe de leſtatute, ſinon que tiels paroir fueront, ſ. dont nul fine eſt leuie en

whereof no lawful fine is rightfully levied in the Kings court: And that is, whereof no fine of the husband and his wife is levied in the Kings Court, for at the time of the making of the ſaid Statute, every eſtate of Lands or tenements that any man or woman had which ſhould deſcend to his heiſe, was fee ſimple without condition, or upon certain conditions in Deed or in Law. And becauſe that then ſuch fine might rightfully be levied by the husband and his wife, and the heires of the husband ſhould warrant, &c. ſuch warranty ſhall barre the heir, and ſo they ſay that this is the meaning of the ſtatute, for if the husband and his wife ſhould make a feoffement in fee by Deed in the Countrie, his heir after the deceaſe of the husband and wife ſhall have a Writ of entry *ſur Cui in vita, &c.* notwithſtanding the Warranty of the husband, then if no ſuch exception were made in the Statute of the fine levied, &c. then the heir ſhould have the Writ of entry, &c. notwithſtanding the fine levied by the husband and his wife, becauſe the words of the ſtatute before the exception of the fine levied, &c. are general, *viz.* that the heir of the wife after the death of the father and mother is not barred of action, if he demand the heritage or the marriage of his mother by Writ of entrie, that his father aliened in the time of his mother, and ſo albeit the husband and wife aliened by fine, yet this is true that the husband aliened in the time of the mother, and ſo it ſhould be in that caſe of the ſtatute, unleſs that ſuch

en la Court le Roy, & illint ils dient que ceo est a entender, dont nul fine per le baron & sa feme est leuie en la Court le Roy, le quel est lotalment leuie en tiel case, car si les Justices ont conusans, que home que nad riens forsque en droit sa feme voile leuier vn fine en son noline solement, ils ne voylont, ne vnque deuoyent prender tiel fine destre leuie per le baron solement sans sa feme, &c. Ideo Quære de cest matter, &c.

words were, *viz.* whereof no fine is levied in the Kings Court, & so they say that this is to be understood, whereof no fine by the husband and his wife is levied in the kings court, that which is lawfully levied in such case, for if the Justices have knowledge, that a man that hath nothing but in the right of his wife will levy a fine in his name only, they will not, neither ought they to take such fine to be levied by the husband alone without his wife, &c. *Ideo quære* of this matter, &c.

¶ *Eo ayant mon maister* Sir R. Newton, *&c.* who was a Gentleman of an ancient family; in Latine de nova villa, in French de neufe ville, and a reverend learned Judge, and worthily advanced to be Chief Justice of the Court of Common Pleas, whom our Author remembers with great reverence, as by his words you may perceive, calling him his Master, and citeth his opinion delivered once in the Court of Common Pleas, which our Author heard and observed (whose example therein, it is necessary for our student to follow) but the latter opinion (as hath been before observed) being Littletons own, is against the opinion of the Lord Newton (d) and the Law is holden clerly with our Author at this day, and our Author (as in all other cases) hath good Authority in Law to warrant his opinion, Nullius hominis authoritas tantum apud nos valere debet, ut meliora non sequeremur si quis attulerit.

(d) Bracton 321. Fleta lib. 5. cap. 34. 8 E. 2. Gar. 81. 18 E. 3. 51. 7 E. 3. 84. Pl. Com. 57.

¶ *Car si les Justices ont conusance, &c.* Hereby it appeareth (e) that the Judge, if he knoweth it, ought not to take knowledge of a Fine that worketh a wrong to a third person.

Sect. 731.
(e) 33 H. 6. 52. 5 E. 3. 56. 2 Eliz. Dier. 178. 1 H. 7. 9. 1 Mar. 89. 4 E. 3. 41. 7 Eliz. Dier. 246. Vid. Sect. 87. &c.

¶ *Que serroit inconuenient.* Argumentum ab inconvenienti, is very forcible in Law, as often hath been observed.

Of the rest of these three Sections sufficient hath been said before.

Sect. 732.

¶ Item, est ascauoir, que en ceux paroir, ou lheire demande lheritage, ou le mariage sa mere, cest parol (ou) est vn disiunctive, et est autant a dire, si lheire demande le heritage sa mere, ꝑ. les tenements que sa mere auoit en fee simple per discent, ou per purchase, ou si lheire demaund le mariage sa mere, cest ascauoir, les tenements que

ALso it is to be understood, that in these words where the heire demands the heritage, or the marriage of his mother, this word (or) is a disjunctive, and is asmuch to say, if the heire demand the heritage of his mother, *viz.* the tenements that his mother had in fee simple by discent or by purchase, or if the heire demaund the marriage of his mother, that is

que fueront dones a ſa mere en frankmariage.

to ſay, the tenements that were given to his mother in frankmariage.

Some do expound heritage of the mother to be the lands which the mother hath by diſcent. And that conſtruction is true, but the Statute by the Authority of Littleton extendeth alſo where the mother hath it by purchaſe in fee ſimple, for ſo ſaith Littleton himſelf, that this word (Inheritance) is not only intended where a man hath lands by diſcent, but where a man hath a fee ſimple by purchaſe, becauſe his heires may inherit him. And albeit it be true, that the Statute extendeth to an eſtate in Frankmariage acquired by purchaſe, yet doth it extend alſo to all eſtates in taile, as well by diſcent as by purchaſe, for that Frankmariage is put but for an example.

Vide Sect. 9.

Sect. 733.

EGo & hæredes mei warrantizabimus, & imperpetuum defendemus. (a) Wherein three things are to be obſerved: Firſt, That Hæredes mei are words of neceſſity, for otherwiſe the Heirs are not bound. (a) Secondly, Though in the clauſe of the Warranty it be not mentioned to whom, &c. yet ſhall it be intended to the Feoffee. (b) Thirdly, That the Feoffor may by expreſs words warrant the Land for the life of the Feoffee, or of the Feoffor, &c. but the recovery in value ſhall be in Fee. (c) Of this Bracton writeth in this manner, Et ego & hæredes mei warrantizabimus tali & hæredibus ſuis tantùm vel tali & hæredibus & aſſignatis, & hæredibus aſſignatorum, vel aſſignatis aſſignatorum, & eorum hæredibus, & acquietabimus & defendemus eos totam terram illam cum pertinentiis, contra omnes gentes, &c. per hoc autem quod dicit (ego & hæredes mei) obligat ſe & hæredes ad warrantiam propinquos, & remotos, præſentes & futuros, & ſuccedentes in infinitum. Per hoc autem quod dicit (Warrantizabimus) ſuſpicit in ſe obligationem ad defendendam ſuum tenementum in poſſeſſione rei datæ & aſſignatos ſuos & eorum hæredes & omnes alios, &c. Per hoc autem quod dicit (acquietabimus) obligat ſe & hæredes ſuos ad acquietandum ſi quis

(a) 6 E. 2. Vouch. 258. 12 E. 2. lib. 168. 14 H. 4. 15

(b) 38 E. 3. 14.

(c) Brac. fol. 37. 238. & Lib 5. 380, 381. Brit. fol. 106. b. Flet. lib. 5. cap 15. & lib. 6. cap. 23. 15 H. 8. 8 Gar. 90. F. N. B. 134. b.

Brit. ubi ſup. Flet. ubi ſup. 11 H. 6. 48. 6 E. 2. Gar. 262.

ITem, come eſt moue en diuſ faits, ceux parolx en Latyne, Ego & Hæredes mei, warrantizabimus, & imperpetuum defendemus, il eſt a veier ſi effect ad cel parol, Defendemus, en tiels faits, & il ſemble que il nad pas leffect de Garrantie, ne emprent en luy la cauſe de Garrantie, car ſil illint ſerroit, que il prent effect ou cauſe de Garrantie, donqz il ſerroit mitte en aſcuns fines levies en la Court le Roy: Et home ne veiet ceo vnque, que ceſt parol Defendemus, fuit en aſcun fine, mes tantſolemẽt ceſt parol Warrantizabimus, per que ſemble que ceſt parol & Verbe Warrantizo, fait la Garrantie, & eſt la cauſe de Gar-

ALſo where it is contained in divers Deedes theſe words in Latine, *Ego & Hæredes mei warrantizabimus & imperpetuum defendemus*; it is to be ſeen what effect this word (*Defendemus*) hath in ſuch Deeds; and it ſeemeth that it hath not the effect of Warrantie, nor comprehendeth in it the cauſe of Warranty, for if it ſhould be ſo that it tooke the effect or cauſe of Warrantie, then it ſhould be put into ſome Fines levied in the Kings Court, and a man never ſaw, that this word (*Defendemus*) was in any Fine, but only this word (*Warrantizabimus*) By which it ſeemeth, That this word and Verbe (*Warrantizo*) maketh the Warrantie, and is the

Garrantie, & nul auter Verbe en noſtre Ley.

cauſe of Warrantie, and no other word in our Law.

plus petierit ſervitii vel aliud ſervitium quam in carta donationis continetur. Per hoc autem quod dicit (Defendemus) obligat ſe & hæredes ſuos ad defendendum ſi quis velit ſervitutem ponere rei datæ contra formam ſuæ donationis. (d) Hereby it appeareth, That neither Defendere nor Acquietare doth create a Warrantie, but Warrantizare only. And as Ego & hæredes mei warrantizabimus, &c. in Latine do create a Warrantie; ſo, I and my heires ſhall warrant, &c. in Engliſh, doth create a Warrantie alſo.

(d) 46 E.3.28. 11 H.4.41 6 E.2. Vouch. 202. 2 E.4.15.2.

(e) If a man be bound to A. in an Obligation, to defend ſuch lands to A. whereof the Obligor had infeoffed him for twelve years, &c. in this caſe if he be ouſted by a ſtranger without being impleaded, the Obligation is forfeit: but if he be bound to warrant the Land, &c. the Bond is not forfeited, unleſs the Obliger be impleaded, and then the Obligor muſt be ready to warrant, &c.

(e) 2 E.4.5.tit.Det.71.

¶ *Donques il ſerra mit en aſcuns fines, &c.* Here Littleton draweth an Argument from the form and words of a Fine, and his reaſon is this, That ſeeing that a Fine is the higheſt and ſureſt kind of aſſurance in Law, if Defendemus had the force of a Warranty it would have been contained in Fines: and on the other ſide ſeeing this word Warrantizo is contained in Fines to create a Warrantie, that therefore that word doth imply a Warranty, and not the other.

¶ *Et nul auter Verbe en noſtre Ley.* Here it appeareth, That no other Verbe in our Law doth make a Warrantie, but Warrantizo only, which is only appropriated to create a Warranty.

46 E.3.28. Vide Sect. 1.

But, Qui benè diſtinguit, benè docet, and here, of neceſſity you muſt diſtinguiſh. * Firſt between a Warrantie annexed to a Freehold or Inheritance, (whereof Littleton here ſpeaketh) and a Warranty annexed to a Ward, which is a Chattel real, for there, Grant, Demiſe, and the like, do make a Warrantie. And of Warranties annexed to Freeholds and Inheritances, ſome be Warranties in Deed, and ſome be Warranties in Law. A Warrantie in Deed, or an expreſs Warrantie, (whereof Littleton here ſpeaketh) is created only by this word Warrantizo, but Warranties in Law are created by many other words; they be therefore called Warranties in Law, becauſe in judgement of Law they amount to a Warranty without this Verbe Warrantizo. (f) As Dedi is a Warrantie in Law to the Feoffee and his Heires during the life of the Feoffor, but Conceſſi in a Feoffment or Fine implyeth no Warrantie. But before the Statute of Quia emptores terrarum, if a man had given lands by this word Dedi, to have and to hold to him and his Heires, of the Donor and his Heires, by certain Services, then not only the Donor but his Heires alſo had been bound to Warrantie. But if before that Statute a man had given Lands by this word Dedi, to a man and to his Heires for ever, to hold of the chief Lord, there the Feoffor had not been bound to Warrantie, but during his life, as at this day he is.

Sect.697.
* 31.E.3.Vouch.24.12. Rich.2. tit.Cont. de Vouch.35.29 E.3.48. 30 E.3.6.b. Symken Symons caſe.8 E.3.61. 12 E.3. Vouch.727. Temps E.1. Vouch. 302. 3 H.6.17.

(f) Leſtat.de Bigamis c.6. 2 H.7.7. 6 H.7.2. 48 E. 32. 31 E.1. tit. Vouch. 290. Fitz.N.B. 134.b. 6 E.2. Vouch. 258.

And albeit the words of the Statute of Bigamis be, In cartis autem ubi continentur (Dedi & conceſſi, &c.) yet if Dedi be contained alone, it doth import a Warrantie, for the Statute doth conclude, Ipſe tamen feoffator in vita ſua ratione proprii doni ſui tenetur warrantizare. So as Dedi is the word that implyeth Warrantie, and not Conceſſi. Alſo where the words of the Statute be further, ſine clauſula quæ continet Warrantiam, the meaning of the Statute is, That Dedi doth import a Warrantie in Law, albeit there be an expreſs Warrantie in the Deed.

For if a man make a Feoffment by Dedi, and in the Deed doth warrant the Land againſt I.S. and his Heires, per Dedi is a generel Warranty during the life of the Feoffor, and ſo was the Statute expounded in both points, (g) Hil.14.El. in the Court of Common Pleas, which I my ſelf heard and obſerved. (h) And if a man make a Leaſe for life reſerving a Rent, and add an expreſs warranty, here the expreſs Warrantie doth not take away the Warrantie in Law, for he hath election to vouch by force of either of them. And in Nokes Caſe note a diverſity between a Warrantie that is a Covenant real, and a Warrantie concerning a Chattel. (i) Alſo this word Excambium doth imply a Warranty.

(g) Hil.14.El.in Com. Banc.
(h) Lib.4.fol.80. in Nokes caſe.8 E.3.69. 9 E.3.15.10 E.3.11. 20 E.3.Cont.de Gar.7. 31 E.3. Vouch. 280. 32 E.3.ib.102.43 E.3.6. 2 E.3.tit. Cui in vita 17. 3 E.3. Formedon 44.
(i) 4 E.2. Vouch.245. 22 E.3.3.14 H.6.2. 20 H.6.14.Lib.4.fol.122. in Buſtards Caſe.15 E.3. Bar.155.43 E.3.3.Libr. fol.96. Lib.5.fol.17. Spencers caſe. Lib 8.fol. 75.Sir Staffords caſe.

Alſo a Partition implyeth a Warrantie in Law, as in the Chapter of Parceners appeareth. And Homage Anceſtrel doth draw to it ſelf Warrantie, as hath been ſaid in the Chapter of Homage Anceſtrel.

And it is to be obſerved, That the Warrantie wrought by this word Dedi is a ſpecial Warrantie, and extendeth to the Heires of the Feoffee during the life of the Donor only. But upon the Exchange and Homage Anceſtrel the Warrantie extendeth reciprocally to the Heires, and againſt the Heires of both parties: and in none of the Caſes the Aſſignee ſhall vouch by force of

of any of theſe Warranties, but in the caſe of the exchange and Dedi the Aſſignee ſhall rebutt, but not in the caſe of Homage Anceſtrel.

(k) 28 Aſſ.33. 14 H.4.5. 18 E.3.18,4 E.3.Avowr. 201,& 202. 19 E.3. Avowr.201,202.11 E.3. Avowr.209. 30 H.6.7. 33 H.8.Dyer 51.10.H.7. 11.b.F.N.B. 163. a.

(k) And ſo no man ſhall have a Writ of Contra formam collationis, but only the Feoffor and his Heires which be privy to the Deed, but an Aſſignee may rebut by force of the Deed.

(l) If a man make a gift in Taile or a Leaſe for life of Land, by Deed or without Deed, reſerving a Rent, or of a Rent ſervice by Deed, this is a Warrantie in Law, and the Donee or Leſſee being impleaded ſhall vouch and recover in value. And this Warrantie in Law extendeth not only againſt the Donor or Leſſor, and his Heires, but alſo againſt his Aſſignees of the Reverſion, and ſo likewiſe the Aſſignee of Leſſee for life ſhall take benefit of this Warrantie in Law.

(l) 6 E.2.Cont.ac Vouch.105.5 E.3.7. 4 E.2.ib.102. 6 E.3.11. 50.7 E.3.6. 18 E.3.8. 22 E.3.3. 3 H.7.3.6 H. 7.2 14.E.3.Garr.32. F.N.B. 134.g.5 E. 3.87.20 E.3.tit. Counterplea de Gar.7.

(m) When Dower is aſſigned there is a warrantie in Law included, that the Tenant in Dower being impleaded, ſhall vouch and recover in value a third part of the two parts whereof ſhe is dowable.

(m) 4 E.3.36. 33 E.3. tit.Cont.de Vouch.122. 43 Aſſ.32. 50 E.3.7. F. N. B. 149. m.

And it is to be underſtood, That a Warranty in Law and Aſſets is in ſome caſes a good bar.

(n) In a Formedon in the Diſcender the Tenant may plead, That the Anceſtor of the Demandant exchanged the Land with the Tenant for other Lands taken in exchange, which deſcended to the Demandant, whereunto he hath entred and agreed; or if he hath not entred and agreed unto the Lands taken in exchange, then the Tenant may plead the Warranty in Law, and other Aſſets deſcended.

(n) 14 H.6.2. 15 E. 3. Bar.255.

(o) If Tenant in Taile of Lands make a gift in Taile, or a Leaſe for life, rendring a Rent, and dieth, and the Iſſue bringeth a Formedon in the Diſcender, the Reverſion and Rent ſhall not barre the Demandant, becauſe by his Formedon he is to defeat the Reverſion and Rent, Et non poteſt adduci exceptio ejuſdem rei, cujus petitur diſſolutio.

(o) 38 E.3.22,23,24. 13 E.3.Gar.35.

(p) But if other Aſſets in Fee ſimple do deſcend, then this Warrantie in Law and Aſſets is a good barre in the Formedon.

(p) 16 E.3. Age 45. 18 E.3.S.311.3.Gar.39.

Here four things are to be obſerved: Firſt, that no Warrantie in Law doth barre any Collateral title, but is in nature of a Lineal Warrantie: Wherein the equity of the Law is to be obſerved.

Secondly, That an expreſs warranty ſhall never bind the Heires of him that maketh the Warrantie, unleſſe (as hath been ſaid) they be named: as for example, Littleton here ſaith (Ego & hæredes mei) but in caſe of warranties in Law, in many caſes the Heires ſhall be bound to Warranty, albeit they be not named.

Vide lib.4.fol.121. Baſtards Caſe.

Thirdly, That in ſome caſes Warranties in Law do extend to execution in value, of ſpecial Lands, and not generally of Lands deſcended in Fee ſimple, as you may ſee at large in my Reports.

(q) 45 E.3.20.b.

(q) Fourthly, That Warranties in Law may be in ſome caſes created without Deed, as upon gifts in taile, Leaſes for life, Eſchanges, and the like.

And ſeeing ſomewhat hath been ſaid out of Bracton and other antient Authors, concerning Aſſignees, it is neceſſary to ſhew who ſhall take advantage of a Warrantie, as Aſſignee by way of Voucher, to have recompence in value.

(r) If a man infeoffe A. and B. to have and to hold to them and their Heires, with a Clauſe of Warrantie, Prædictis A. & B. & eorum hæredibus & aſſignatis: In this caſe if A. dieth, and B ſurviveth and dieth, and the Heire of B. infeoffeth C. he ſhall vouch as Aſſignee, and yet he is but the Aſſignee of the Heire of one of them, for in judgement of Law the Aſſignee of the Heire, is the Aſſignee of the Anceſtor, and ſo the Aſſignee of the Aſſignee ſhall vouch in infinitum, within theſe words, (his Aſſignes.)

(r) 14 E.3.Gar. 33. 13 E.1.Gar.83.

Lib.5.fol.17.b.in Spencers caſe. 38 E.3.21.

(ſ) If a man infeoffeth A. To have and to hold to him, his Heires and Aſſignes; A. infeoffeth B. and his Heires, B. dieth, the Heire of B. ſhall vouch as Aſſignee to A. So as Heires of Aſſignees, and Aſſignees of Aſſignees, and Aſſignees of Heires are within this word (Aſſignes) which ſeemed to be a queſtion in Bractons time. And the Aſſignee ſhall not only vouch, but alſo have a Warrantia Cartæ.

(ſ) 12 E.2 Vouch.263. 19 E.2.Gar.85.13.E.1.ib. 93. Lib.5.fol.17. Spencers caſe.7 E.3.3. 10 E. 3 9.14 E.3. Gar. 33. Bract.ubi ſup. 9 E.2.Gar. de Chart. 30.36 E.3. Gar.1.4 H.8.Dy.1. F.N.B.135.

If a man doth warrant Land to another without this word (Heires,) his Heires ſhall not vouch: and regularly if he warrant Land to a man and his Heirs, without naming Aſſignes, his Aſſignee ſhall not vouch. (t) But if the Father be infeoffed with Warranty to him and his Heires, the Father infeoffeth his eldeſt Son with Warrantie and dieth, the Law giveth to the Sonne advantage of the Warrantie made to his Father, becauſe by act in Law the Warrantie between the Father and the Son is extinct.

(t) 43 E.3.23.26 F.5.68. 40 E.3.14.24 E.3.30. 11 H.4.94.30 E.3.17. 5 E.3.Age 19. Pl.Com. 418.

But note there is a diverſitie between a Warrantie that is a Covenant real, which bindeth the party to yeild Lands or Tenements in recompence, and a Covenant annexed to the Land, which is to yeild but damages, for that a Covenant is in many Caſes extended further than the warrantie. As for example:

(u) It hath been adjudged, That where two Coparceners made partition of Land, and the one made a Covenant with the other, to acquite her and her Heires of a Suit that iſſued out

(u) 42 E.3.b. per Finchden.

out of the Land, the Covenantee alieneth. In that caſe the Aſſignée ſhall have an action of covenant, and yet he was a ſtranger to the Covenant, becauſe the acquital did runne with the Land.

(x) A. ſeiſed of the Mannor of D. whereof a Chappel was parcel, a Priour with the aſſent of his Covent covenanteth by Deed indented with A. and his heires to celebrate Divine Service in his ſaid Chappel weekly, for the Lord of the ſaid Mannor, and his Servants, &c. In this caſe the Aſſignes ſhall have an action of Covenant, albeit they were not named, for that the remedy by Covenant doth run with the Land, to give dammages to the party grieved, and was in a manner appurtenant to the Mannor. (y) But if the Covenant had been with a ſtranger to celebrate Divine Service in the Chappel of A. and his heires, there the Aſſignée ſhall not have an action of Covenant, for the Covenant cannot be annexed to the Mannor, becauſe the Covenantée was not ſeiſed of the Mannor. See in Spencers Caſe before remembred, divers other diverſities betwixt Warranties, and Covenants which yeild but dammages.

(x) 42 E.3.3.2. Laur. Parkenhams caſe. 2 H.4.6. 6 H.4.1. & 2. Ralfe Brabſons caſe. Lib. 5. fol. 17. 18. Spencers caſe.

(y) 2 H.4.6. Hen. Hornes caſe. 6 H.4.1. Lib. 5. fol. 17, 18. Spencers caſe.

And here it is to be obſerved, that an Aſſignee of part of the Land ſhall vouch as Aſſignée. (*) As if a man make a feoffement in fee of two Acres to one, with warranty to him, his heirs and aſſignes if he make a feoffement of one Acre, that Feoffée ſhall vouch as Aſſignee, for there is a diverſity betwixt the whole eſtate in part, and part of the eſtate in the whole, or of any part. As if a man hath a Warrantie to him, his heirs and aſſignes, and he make a Leaſe for life, or a gift in taile, the Leſſée or Donee ſhall not vouch as Aſſignée, becauſe he hath not the eſtate in fee ſimple, whereunto the Warranty was annexed, but the Leſſe for life may pray in aide, or the Leſſée or Donee may vouch the Leſſor or Donor, and by this meanes he ſhall take advantage of the Warranty. But if a Leaſe for life, or a gift in taile be made, the Remainder over in fee, ſuch a Leſſe or Donée ſhall vouch as Aſſignee, becauſe the whole eſtate is out of the Leſſor, and the particular eſtate, and the Remainder do in judgement of Law to this purpoſe make but one eſtate.

(*) 18 E.3.52.10 E.3.58 5 E.3.40.12 E.3. Counterplea de Voue. 42. 14 E.3. Voucher 108. 5 E.3. ibid. 178. 13 E.3. ibid. 119. 40 E.3. 41 E.3. Vouch. 89. & 100. 32 E.3. ibid. 96. And this diverſitie was agreed Hill. 14 Eliz. 1. Communi Banco, which I heard and obſerved.

(a) If a man infeoffe three with Warranty to them and their heires, and one of them releaſe to the other two they ſhall vouch, but if he had releaſed to one of the other, the Warranty had been extinct for that part, for he is an Aſſignée.

(a) 40 E.3.14.40 Aſſ. 5. 33 H.6.4. 37 H.8. Alienation ſans licence 31. 8 H.4.8.

(b) If a man doth warrant Land to two men and their heirs, and the one make a feoffment in fee, yet the other ſhall vouch for his moity. If a man at this day be infeoffed with Warranty to him, his heires, and aſſignes, and he make a gift in taile, the Remainder in fee, the Donee make a feoffement in fee, that Feoffée ſhall not vouch as Aſſignee, becauſe no man ſhall vouch as Aſſignée, but he that cometh in in privity of eſtate, but he muſt vouch his Feoffor, and he to vouch as Aſſignee, but ſuch an Aſſignee may rebutte. If the Warrantie be made to a man and his heirs without this word (Aſſignes) yet the Aſſignee, or any tenant of the Land may rebutte. And albeit no man ſhall vouch or have a Warrantia cartæ, either as party, heir, or aſſignée, but in privity of eſtate, yet any that is out of another eſtate, be it by Diſſeiſin, abatement, intruſion, uſurpation or other wiſe, ſhall rebutte by force of the Warranty, as a thing annexed to the Land which ſometime was doubted (c) in our Books. But herein is a diverſity to be obſerved, when in the Caſes aforeſaid, he that rebutteth claimeth under the Warranty. And when he that would rebutte claimeth above the Warranty, for there he ſhall not rebutte. And therefore if Lands be given to two brethren in fee ſimple, with a Warranty to the eldeſt and his heires, the eldeſt dieth without iſſue, the Survivor albeit he be heir to him, yet ſhall he neither vouch nor rebutte, nor have a Warrantia cartæ, becauſe his title to the Land is by relation above the fail of the Warrantie, and he cometh not under the eſtate of him, to whom the Warrantie is made, as the Diſſeiſor, &c. doth.

(b) 11 R.2. Detin. w. 46. 7 E.3.35. 46 E.3.4.

(c) 38 E.3.21.26 E.3.56 Lib.10. fo. 96. b. Seymors caſe. 7 E.3.34, 35. 8 E.3. 10.49 E.3.4.10 E.3.42. 45 E.3.18. 10 Aſſ.5.35 Aſſ.9.22. Aſſ.39.88.31 Aſſ.13.

(d) If a man make a gift in taile at this day, and warrant the Land to him, his heires and aſſignes, and after the Donee make a feoffement and dieth without iſſue, the Warrantie is expired as to any Voucher or Rebutter, for that the eſtate in taile whereunto it was knit is ſpent: otherwiſe it is, if the gift and feoffement had been made before the Statute of Donis conditionalibus, for then both the Donee and Feoffee had a fee ſimple, and ſo are our Books to be intended in this and the like Caſes.

(d) Lib.3. fol.62, 63. Lincolne College Caſe.

(e) If A. be ſeiſed of Lands in fee, and B. releaſeth unto him or confirmeth his eſtate in fee with warrantie to him, his heires and aſſignes, all men agree this Warranty to be good: but ſome have holden, that no Warranty can be raiſed upon a bare Releaſe or Confirmation without paſſing ſome eſtate or tranſmutation of poſſeſſion. (f) But the Law, as it appeareth by Littleton himſelfe, is to the contrary, and that both the party, and (as ſome do hold) his Aſſignes ſhall vouch, but he that is vouched in that caſe muſt be preſent in Court, and ready to enter into the Warranty and to anſwer, and the Tenant muſt ſhew forth the Deed of Releaſe or Confirmation with Warrantie, to the intent the Demandant may have an anſwer thereunto, and either deny the Deed or avoid it, for that at the time of the Confirmation made, he to whom it was made, had nothing in the Land, &c. for otherwiſe the Demandant may counterplead the Voucher by the Statute of W. 1. viz. that neither Vouchee nor any of his Anceſtors had any

(e) 14 E.3.Gar.108. 12 H.7.1.

(f) 11 H.4.12.10 E.3. 52.21 E. 3.37. Vid. Sect. 706.738. & 745.

W.1.cap. 40.

Vid. 20 E. 1. Statute de vocat. ad warrant.

(g) 22 H. 6. 15. 19 H. 6. 7. 1. 20 H. 6. 23. 2 H. 4. 13 43 E. 3 Garr. 5. 43 E. 3. 17. 43 A. 42. 12 Ass. 17. 12 E. 3. taile 3. 22 E. 4. 16. b. 44 E. 3. 10. 44 Ass. Bassingborns. Ass. lib. 10. fol. 97. Seymors Case.

(h) Lib. 3. fo. 63. Lincolne College Case.

(i) 22 E. 3 70. 17 E. 2. Joinder in action. 1. 11 E. 4. 8.

(k) 14 H. 4. 3.

seisin whereof he might make a feoffement. And this is grounded upon the said Statute of W. 1. the words whereof be, Si nient son garrantie en present, que lun voile garranter de son gree, & maintenant enter en respons. Otherwise the Tenant must be driven to his Warrantia cartæ.

(g) But a Warrantie of it self cannot enlarge an estate, as if the Lessor by Deed releas to his Lesse for life, and warrant the Land to the Lessé and his heires, yet doth not this enlarge his estate.

(h) If a man make a feoffement in fée with warrantie to him, his heires and Assignes by Deed (as it must be) and the Feoffee enfeoffeth another by parol, the second Feoffee shall vouch, or have a Warrantiæ cartæ, (as hath been said) as Assignee, albeit he hath no Deed of the assignment, because the Deed comprehending the Warranty, doth extend to the Assignées of the Land, and he is a sufficient Assignee, albeit he hath no Deed.

(i) If a man infeoffe two, their heires and assignes, and one of them make a feoffement in fée, that Feoffee shall not vouch as Assignée.

If a man make a feoffment in fee to A. his heires and assignes. A. infeoffeth B in fee, who re-enfeoffeth A. he or his assignes shall never vouch, for A cannot be his own Assignée. But if B. had infeoffed the heir of A. he may vouch as Assignee, for the heir of A. may be Assignee to A. inasmuch as he claimeth not as heir.

(k) If a man make a feoffement by Deed of Lands to A. To have and to hold to him and his heires, and bind him and his heirs to warrant the Land in forma prædicta, this Warrantie shall extend to the Feoffée and his heires. But if he had warranted the Land to the Feoffée, the Warrantie had not extended to his heirs, except the words had been to him and his heirs.

If a man letteth Lands for life, the Remainder in taile, the Remainder eadem forma, this is a good estate taile, quia idem semper refertur proximo præcedenti.

Sect. 734.

ITem, si tenant en taile soit seisie des terres deuisables per testament solonque le custome, &c. et le tenant en tayle alien meimes les Tenements a son frere en fée, et ad issue, et devie, et puis son frere deuisa per son Testament meimes les tenements a vn auter en fée, et oblige luy et ses heires a Garrantie, &c. et mozust sans issue, il semble que cest Garrantie ne barrera my lissue en tayle, il voit sues son brief de Formedon, pur ceo que cest Garrantie ne discend my al issue en le tayle, entant que le Uncle del issue ne fuit my oblige a le Garrantie en sa vie: ne que il ne puisloit Garranter les tenements en sa vie, entant que le deuise ne puisloit prender ascun execution ou effect, forsque apres son decease. Et entant que le Uncle en son vie ne fuit tenus de Garranter, tiel Garrantie ne poit discender

ALso, if tenant in taile be seised of Lands devisable by testament after the custom &c. and the tenant in the tayle alieneth the same Tenements to his brother in fee, and hath issue and dieth, and after his brother deviseth by his Testament the same tenements to another in fee, and bindeth him and his heires to Warrantie, &c. and dieth without issue, it seemeth that this Warrantie shall not barre the issue in the taile, if he will sue his Writ of *Formedon*, because that this Warranty shall not descend to the issue in tayle, in so much as the Uncle of the issue was not bound to the same Warrantie in his lifetime: neither could he warrant the Tenements in his life, insomuch as the Devisee could not take an execution or effect until after his decease. And insomuch as the Uncle in his life was not

der de luy al iſſue en le tayle, &c. car nul chose poit diſcender del auncester a ſon heire, ſinon que meſme ceo fuit en launceſter.

held to warrantie, ſuch warrantie may not deſcend from him to the iſſue in the tayle, &c. for nothing can deſcend from the Anceſtour to his heire, unleſs the ſame were in the Anceſtour.

HEre our Author declareth one of the Maximes of the Common Law, that the heir ſhall never be bound to any expreſs Warrantie, but where the Anceſtor was bound by the ſame Warranty, for if the Anceſtor were not bound, it cannot deſcend upon the heir, which is the reaſon here yelded by Littleton. (l) If a man make a Feoffement in fee, and bind his Heirs to Warranty, this is void by the Warrant of this Maxime, as to the heir, becauſe the Anceſtor himſelf was not bound. Alſo if a man bind his heirs to pay a ſum of money, this is void. And of the other ſide, if a man bind himſelf to Warranty, and bind not his heirs, they be not bound, for he muſt ſay, as it appeareth before, Ego & hæredes mei warrantizabimus, &c. (m) And Fleta ſaith, Nota quod hæres non tenetur in Anglia ad debita anteceſſoris reddenda, niſi per anteceſſorem ad hoc fuerit obligatus, præterquam debita regis tantum: A fortiori in caſe of Warranty, which is in the realty.

(l) 31 E. 1. Grant, 85.

Bracton li. 2. fo. 37. 238. Britton fol. 106. b.

(m) Fleta lib. 2. cap. 55. Britton fol. 65. b. 11 H. 6. 48.

But a Warranty in Law may bind the heir, although it never bound the Anceſtour, and may be created by a Laſt will and teſtament. (n) As if a man deviſe Lands to a man for life or in taile reſerving a Rent, the Deviſee for life or in taile ſhall take advantage of this Warrantie in Law, albeit the Anceſtor was not bounden, and ſhall bind his heirs alſo to Warranty, although they be not named. Alſo an expreſs Warranty cannot be created without Deed, and a Will in writing is no Deed, and therefore an expreſs Warrantie cannot be created by Will.

(n) 18 E. 3. 8.

Sect. 735.

MAry vn Garrantie ne poit aler ſolonque la nature des tenements per le cuſtome, &c. mes tantſolement ſolonque le ſoyme del Common ley. Car ſi le tenant en taile ſoit ſeiſie des Tenements en Burgh Engliſh, lou le cuſtome eſt, que touts les tenements deins meſm le Borough, deuoyent diſcender a le ents puiſne, et il diſcontinua le tayle oue Garrantie, &c. & ad iſſue deux fits, & morust ſeiſie des auters terres ou Tenements en meſme le Burgh en fée ſimple a le value, ou pluis de les Tenements tailes, &c. uncore le puiſne fits auera vn Formedon de les terres tailes, & ne ſerra my bark per le Garrantie ſon pere, coment que Aſſets a luy diſcendiſt en fée ſimple de meſme le pere, ſolonque le

ALſo a Warranty cannot go according to the nature of the Tenements by the cuſtom, &c. but only according to the form of the Common Law. For if the Tenant in taile be ſeiſed of Tenements in Borough Engliſh, where the cuſtom is, that all the Tenements within the ſame Borough ought to deſcend to the youngeſt ſonne, and he diſcontinueth the taile with Warranty, &c. and hath iſſue two ſonnes, and dyeth ſeiſed of other Lands or Tenements in the ſame Borough in fee ſimple to the value or more of the Lands entailed, &c. yet the youngeſt ſonne ſhall have a *Formedon* of the Lands tailed, and ſhall not be barred by the Warranty of his father, albeit Aſſets deſcended to him in fee ſimple from his ſaid father

le cuſtome, &c. pur ceo que le garrantie diſcendiſt a ſon eigne frere que eſt en pleine vie, et nemy ſur le puiſne. Et en meſme le maner eſt de collateral Garrantie fait de tiels Tenements, ſou le Garrantie diſcendiſt ſur leigne fits, &c. ceo ne barrera my le puiſne fits, &c.

according to the cuſtom, &c. becauſe the warranty deſcendeth upon his elder brother who is in full life, and not upon the youngeſt. And in the ſame manner is it of collateral warranty made of ſuch Tenemēt, where the warranty deſcēdeth upon the eldeſt ſonne, &c. this ſhall not barre the younger ſon, &c.

Sect. 736.

EN meſme le maner eſt de Tenements en le Countie de Kent, queux ſont appelles Gaulkind, les queux Tenements ſont departibles enter les freres, &c. ſolonque la cuſtom, ſi aſcun tiel Garrantie ſoit fait per ſon auncеſter, tiel Garrantie diſcendera tantſolement al heire que eſt heire al common ley, ceſtaſcauoir al eigne frere, ſolonque la conuſans del common ley, & nemy a touts les heires queux ſont heires de tiels tenements ſolonque le cuſtome.

IN the ſame manner is it of lands in the County of Kent, that are called Gaulkinde, which lands are devidable between the brothers, &c. according to the cuſtom, if any ſuch Warrantie be made by his Anceſtor, ſuch Warrantie ſhall deſcend only to the heir, which is heir at the Common Law, that is to ſay, to the elder brother, according to the conuſance of the Common Law, and not to all the heires that are heires of ſuch Tenements according to the cuſtome.

Vid. Sect. 603. 718. & 737

(n) 11 E. 3. Dec. 7. 11 H. 7. 12.

(o) 17 E. 3. Joint. 41. 16 H. 7 13. 29 E. 3. 46. 13 H. 7 3. 22 E. 3. 1. 17 E. 3. 8. 30 E. 3. 40. 19 H. 6. 55. lib. 3. fol. 14. Matthew Herberts caſe.

HEreupon a diverſity is to be obſerved between the Lien real, and the Lien perſonal; For the Lien real, as the Warrantie, doth ever deſcend to the heire at the Common Law, (n) but the Lien perſonal doth bind the ſpecial heirs, as all the heirs in Gavelkind, and the heir on the part of the mother, as hath been ſaid.

(o) If two men make a Feoffement in fée with a warranty, and the one die, the Feoffée cannot vouch the ſurvivor only, but the heir of him that is dead alſo, but otherwiſe if two joyntly bind themſelves in an Obligation, and the one die, the ſurvivor only ſhall be charged.

Sect. 737.

ITem, ſi tenant en le taile ad iſſue deux files per diuers venters, & mozuſt, & les files entront, et vn eſtrange eux diſſeiſiſt de meſmes les tenements, et lun de eux releſſa per ſon fait a le Diſſeiſor tout ſon droit, & oblige luy et ſes heires a garrantie, et mozuſt ſans iſſue: en ceſt caſe la ſoer

ALſo if tenant in taile hath iſſue two daughters by divers venters and dieth, and the daughters enter, and a ſtranger diſſeiſeth them of the ſame tenements, and one of them releaſeth by her Deed to the Diſſeiſor all her right, and bind her and her heirs to warrantie, and die without iſſue. In this caſe the

ſoer que ſuruesquist poit bien enter & ouster le Disseisor de touts les Tenements, pur ceo que tiel Garrantie nest pas Discontinuance, ne collateral Garrantie a la ſoer que ſuruesquist, pur ceo que ils sont de demy sanke, & lun ne poit estre heire a lauter, solongue le cours del Common Ley. Mes autrement est, lou y sont files del Tenant en taile per vn mesme venter.

sister which surviveth may well enter, and ouſt the Diſſeiſor of all the tenements, becauſe ſuch Warrantie is no Diſcontinuance nor collateral Warranty to the ſiſter that ſurviveth, for that they are of half bloud, and the one cannot be Heir to the other according to the courſe of the Common Law. But otherwiſe it is where there be daughters of Tenant in taile by one venter.

¶ The reaſon of this is in reſpect of the half bloud, whereof ſufficient hath been ſaid in the firſt Book in the Chapter of Fee ſimple.

Two brothers be by demy venters, the eldeſt releaſeth with Warrantie to the Diſſeiſor of the Uncle, and dieth without iſſue, the Uncle dieth, the Warranty is removed, and the younger brother may enter into the Land.

Sect. 738.

¶ Item, ſi Tenant en taile leſſa les tenements a vn home pur terme de vie, le remainder a vn auter en Fee, & vn Collateral Auncestor confirma le state del tenant a term de vie, & oblige luy & ſes heires a Garrantie pur terme de vie del tenant a terme de vie & mozust, & le tenant en taile ad iſſue, & deuie, ozе iſſue est barre a demander les tenements per Briefe de Formedon, durant le vie le tenant a terme de vie, per cauſe del collateral Garrantie diſcendu ſur le iſſue en le taile. Mes apres le deceaſe de le

ALſo if Tenant in taile letteth the Lands to a man for terme of life, the Remainder to another in Fee, and a collateral Anceſtor confirmeth the ſtate of the Tenant for life, and bindeth him and his heires to Warrantie for term of the life of the tenant for life, and dieth, and the Tenant in tail hath iſſue and dies, now the iſſue is barred to demand the Tenements by Writ of *Formedon* during the life of Tenant for life, becauſe of the collateral Warrantie deſcended upon the iſſue in taile. But after the deceaſe of the Tenant for life,

¶ HEre it appeareth, that a Warranty may be raiſed by a Confirmation which tranſferreth neither eſtate nor right, whereof ſufficient hath been ſaid before. Vid. Sect. 733, & 706.

¶ *A Garrantie pur terme de vie, &c.* (p) This proveth that a warranty may be limited, and that a man may warrant Lands as well for terme of life, or in taile, as in fee. (p) 38 E. 3. 14. 10 E. 3. Vouch. 87.

If Tenant in Fee ſimple that hath a Warrantie for life either by an expreſſe Warrantie, or by Dedi, be impleaded and vouch, he ſhall recover a Fee ſimple in value albeit his Warrantie were but for term of life, becauſe the Warrantie extended in that caſe to the whole eſtate of the Feoffee in Fee ſimple, but in the caſe that Littleton here putteth, the Tenant for life ſhall recover in value but an eſtate for life, becauſe the Warranty doth extend to that eſtate only.

¶ *Vn Briefe de Formedon, &c.* Here is implyed that a Collateral Warrantie

Warrantie giveth no right, but ſhall barre only for life, and after the partie is reſtored to his Action.

tenant a term de vie, iſſue auera vn Briefe de Formedon, &c.

the iſſue ſhall have a Writ of *Formedon*, &c.

It is alſo to be obſerved,
That a Warranty may deſcend to the Heirs of him that made it during the life of another.

Sect. 739.

ET ſur ceo ieo aye oye vn reaſon, que cel caſe proera vn auter caſe, ſ. ſi vn home leſſa ſes terres a vn auter, A auer & tener a luy & a ſes Heires pur terme dauter vie, & le Leſſee moruſt viuant celuy a que vie, &c. & vn Eſtrange enter en la Terre que le Heire le Leſſee luy poit ouſter, &c. pur ceo que en le caſe procheine auantdit, entant que home poit obliger luy & ſes Heires a Garrantie al Tenant a terme de vie tantſolement durant la vie le Tenant a terme de vie, & cel Garrantie diſcendiſt al Heire celuy, que fiſt le Garrantie, le quel Garrantie neſt pas Garrantie denheritance, mes tantſolement pur terme dauter vie: per meſme le reaſon lou Tenements ſont leſſes a vn Home, A auer & tener a luy & a ſes Heires pur terme dauter vie, ſi le Leſſee moruſt, viuant celuy a que vie, ſon Heire auera les Tenements, viuant celuy a que vie, &c. Car ont dit, Que ſi home grãt vn annuitie a vn auter, A auer & perceiuer a luy & a ſes Heires pur terme dauter vie, ſi le Grantee moruſt, &c. que apres ſon mort ſon Heire auera lannuitie durant la vie celuy a que vie, &c. Quære de iſta materia.

AND upon this I have heard a reaſon, That this Caſe will prove another Caſe, *viz.* If a man letteth his Lands to another, To have and to hold to him and to his Heires for terme of anothers life, and the Leſſee dieth, living *Celuy a que vie, &c.* and a ſtranger entreth into the land, that the Heir of the Leſſee may put him out, &c. becauſe in the caſe next aforeſaid, inaſmuch as a man may binde him and his Heirs to Warrantie to Tenant for life only, during the life of the Tenant for life, and this Warrantie deſcendeth to the Heir of him which made the Warrantie, the which Warrantie is no Warrantie of Inheritance, but only for term of anothers life. By the ſame reaſon where Lands are let to a man, To have and to hold to him and his Heires for terme of anothers life, if the Leſſee die, living *Celuy a que vie*, his Heires ſhall have the Lands, living *Celuy a que vie, &c.* For they have ſaid, That if a man grant an Annuitie to another, To have and to take to him and his Heires for term of anothers life, if the Grantee die, &c. That after his death his Heir ſhall have the Annuity during the life of *Celuy a que vie, &c. Quare de iſta materia.*

¶ *Eo ay oye vn reason.* Here our Student is taught after the example of our Author, to obſerve every thing that is worth the noting.

¶ *Si vn home leſſa terres a vn auter, &c.* This caſe is without queſtion, (q) That the Heire of the Leſſee ſhall have the Land to prevent an Occupant. And ſo it is (as Littleton here ſaith) in caſe of an Annuity, or of any other thing that lieth in Grant, wherein there can be no Occupant. And of this ſomewhat hath been ſaid in the Chapter of Diſcents.

(q) 17 E.3.48.18 E.3.12 11 H.4.42 7 H.4.46. 8 H.4.15. Dy. 8 El. 253. 18 H.8.3.27 H.8.21 H.8. tit. Eſtat. Br. 30. 19 E.3. tit. Account. 56. 33 Aſſ. p. 17. 22 H.6. 33. 30 E. 3.37. Vide Sect. 387.

Sect. 740.

¶ Mes lou tiel Leaſe ou Grant eſt fait a vn home & a ſes heires pur terme dans, en ceſt Caſe lheire le Leſſée ou le Grantée nauera vnques aps la mort le Leſſée, ou le Grantée ceo que eſt iſſint leſſe ou grant, pur ceo que eſt Chattel real, & Chateux realx y le Common Ley vindra al Executors del Grantée, ou del Leſſée, & nemy al Heire.

But where ſuch Leaſe or Grant is made to a man and to his Heires for terme of years; In this caſe the Heir of the Leſſee or the Grantee ſhall not after the death of the Leſſee or the Grantee have that which is ſo let or granted, becauſe it is a Chattel real, and Chattels reals by the Common Law ſhall come to the Executors of the Grantee, or of the Leſſee, and not to the Heire.

¶ Here is a general rule, That Chattels reals aſwell as Chattels perſonals ſhall go to the Executors or Adminiſtrators of the Leſſee, and not to his Heires. For as Eſtates of Inheritance or Freehold deſcendible ſhall go to the Heire, ſo Chattels, aſwell real as perſonal, ſhall go to the Executors or Adminiſtrators. 11 E.3.tit.Aſſ. 38. 11 Aſſ.21.10 El.Dy 278

(r) But if the Kings Tenant by Knights Service in Capite be ſeiſed of a Manno, whereunto an Advowſon is appendant, and the Church become void, the Tenant dieth, his Heire within age, the King ſhall preſent to the Church, and not the Executors or Adminiſtrators: but if the Land be holden of a common Perſon, in that Caſe the Executor ſhall preſent, and not the Garatine. (r) 24 E.3.26. F.N.B.33.b.F.N.B.34.a

(s) If a Biſhop hath a Ward fallen and dieth, the King ſhall not have the Ward nor the Succeſſor, but the Executor, and the Ward ſhall be aſſets in his hands. So it is of Heriot, Relefe, and the like. (t) But if a Church become void in the life of a Biſhop, and ſo remain until after his deceaſe, the King ſhall preſent thereunto, and not the Executors or Adminiſtrators; for nothing can be taken for a preſentment, and therefore it is no aſſets. (s) 40 E.3.14. (t) 9 H.6. 58. 11 H.47.

Sect. 741.

¶ Item, en aſcuns Caſes il poit eſtre, que coment que vn collateral Garrantie ſoit fait en Fée, &c. uncore tiel Garrantie poit eſtr defeat, & anient. Sicome te-

Alſo in ſome caſes it may be, That albeit a collateral warranty be made in Fee, &c. yet ſuch a Warrantie may be defeated and taken away: As if Tenant in Taile diſcontinue the Taile

¶ *Et morust ſans Iſſue, &c.* Here (as before in this Chapter hath been noted) the Collateral Warrantie doth deſcend upon the Iſſue in Taile, before any right doth deſcend unto him, wherein this Diverſitie is to be obſerved: Where the right is in eſſe in any of the Anceſtors of the Heire, at the time of the Diſ- Vide Sect. 707.

tent

cent of the Collaterall Warrantie, there albeit the Warrantie deſcend firſt, & after the right doth deſcend, the Collateral Warrantie ſhall bind, as here in this caſe of our Author expreſſely appeareth. But where the right is not in eſſe in the Heir, or any of his Anceſtors, at the time of the fall of the Warrantie, there it ſhall not binde.

(u) 7 E. 3. 48, 30 H. 3. 42.

(u) As if Lord and Tenant be, and the Tenant make a Feoffment in Fee with Warrantie, and after the Feoffee purchaſe the Seigniorie, and after the Tenant ceaſe, the Lord ſhall have a Ceſſavit, for a Warrantie doth extend to Rights precedent, and never to any right that commenceth after the Warranty, whereof more ſhall be ſaid in this Section. Alſo a Warrantie ſhall never bar any eſtate that is in poſſeſſion, reverſion or remainder, that is not devеſted, diſplaced, or turned to a right before, or at the time of the fall of the Warrantie.

(w) Lib. 8. fol. 67. Archers caſe.

(w) If a Leaſe for life be made to the Father, the Remainder to his next heire, the Father is diſſeiſed and releaſeth with Warrantie and dieth, this ſhall bar the Heire, although the Warrantie doth fail, and the remainder commeth in eſſe at one time.

nant en taile diſcontinue le taile en fee, & le diſcontinuee eſt diſſeiſie, & le frere del tenãt en le taile releſſa per ſon fait a le Diſſeiſor tout ſon droit, &c. oue garranty ẽ fee, & morust ſans iſſue, & le tenant en le taile ad iſſue & deuie, ore iſſue eſt barr de ſon action p force d collateral garrantie diſcendue ſur luy: mes ſi apres ceo le Diſcontinuee enter ſur le diſſeiſor, donqz poſt iheire en le taile auer bien ſon action de Formedon, &c. pur ceo que le Garrantie eſt aniente & defeat, car quant Garrantie eſt fait a vn home ſur eſtate que adonques il auoit, ſi leſtate ſoit defeat le Garrantie eſt defeat.

in Fee, and the Diſcontinuee is diſſeiſed, and the brother of the Tenant in Taile releaſeth by his Deed to the Diſſeiſor all his right, &c. with Warrantie in Fee, and dieth without iſſue, and the Tenant in taile hath iſſue and die, now the iſſue is barred of his action by force of the collateral Warrantie deſcended upon him. But if afterwards the Diſcontinuee entreth upon the Diſſeiſor, then may the Heire in taile have well his action of *Formedon*, &c. becauſe the Warranty is taken away and defeated, for when a Warrantie is made to a man upon an eſtate which he then had, if the eſtate be defeated the Warrantie is defeated.

(y) Temps E. 1. Voucher 296. 31 Aſſ. 13. 22 Aſſ. 36. 41 Aſſ. 6. 33 E. 3. tit. Gar. 24. lib. 10. fol. 97. E. Seymors caſe.

(y) If there be Father and Sonne, and the Sonne hath a Rent ſervice, Suit to a Mill, Rent charge, Rent Seck, Common of paſture, or other profit apprender out of the Land of the Father, and the Father maketh a Feoffment in Fee with Warrantie, and dieth, this ſhall not barre the Sonne of the Rent, Common, or other profit apprender, quamvis clauſula ſpecialis Warrantie vel acquietancie in cartis tenentium inſeratur, quia in tali caſu tranſit terra cum onere: and he that is in ſeiſin or poſſeſſion need not to make any Entrie or Claime: and albeit the Sonne after the Feoffment with Warrantie, and before the death of the Father had ben diſſeiſed, and ſo being out of poſſeſſion, the warranty deſcended upon him, yet the Warrantie ſhould not binde him, becauſe at the time of the Warrantie made, the Sonne was in poſſeſſion. (*) So if my Collateral Anceſtor releaſe to my Tenant for life, this ſhall not binde my Reverſion or Remainder, becauſe that the Reverſion or Remainder continued in me. But if he that hath a Rent, Common, or any profit out of the Land in taile, diſſeiſe the Tenant of the land, and maketh a Feoffment of the land, and warrant the land to the Feoffee and his heires,

(*) 45 E. 3. 31, 21 H. 7. 11

Vide Sect. 698.

(a) 21 E. 4. 26. 21 H. 7. 9. 3 H. 7. 4. 7 H. 4. 17. 30 H. 8. Dier 42. 30 E. 3. 30. 9 H. 3. 78. 45 E. 3. Voucher 72. F. N. B. 125. 14 H. 8. 6.

(a) regularly the warrantie doth extend ſo all things iſſuing out of the Land, that is to ſay, to warrant the Land in ſuch plight and manner, as it was at in the hand of the Feoffor, at the time of the Feoffment with Warrantie, and the Feoffee ſhall vouch, as of Lands diſcharged of the Rent, &c. at the time of the Feoffment made.

A woman that hath a Rent charge in Fee entermarieth with the Tenant of the Land, an eſtranger releaſeth to the Tenant of the Land with warranty, he ſhall not take advantage of this Warrantie either by Voucher or Warrantia cartæ, for the wife, if her husband die, or the Heir of the wife living, the husband cannot have an Action for the Rent upon a Title before the

the Warrantie made, for if the heir of the wife bring an Affife of Mordancester, this action is grounded after the Warranty, whereunto as hath been faid, the Warrantie fhall not extend.

So it is if the Grantee of the Rent grant it to the Tenant of the Land upon condition, which maketh a feoffement of the Land with Warrantie, this Warrantie cannot extend to the Rent, albeit the feoffement was made of the Land difcharged of the Rent, for if the condition be broken, and the Grantor be intituled to an Action, this muft of neceffitie be grounded after the Warrantie made.

But in the cafe aforefaid when the woman Grantee of the rent marrieth with the Tenant, and the Tenant maketh a feoffement in fee with warrantie, and dieth, the Cui in vita brought by the wife (as by law fhe may) (b) the Feoffee fhall vouche as of Lands difcharged at the time of the Warranty made for that her title is Paramont, for if tenant in taile of a Rent-charge purchafe the Land, and make a feoffement with warranty, if the iffue bring a Formedon of the Rent, the Tenant fhall vouch Cauſa qua ſupra. (b) 7 H.4.17.

(*) But fome do hold, that a man fhall not vouch, &c. as of Land difcharged of a Rent Service. (*) 10 E.4 9.b. 18 E.3. 55. 44 E.2.19.

(c) Alſo no Warrantie doth extend unto meer and naked Titles, as by force of a condition with clauſe of Re-entry, Exchange, Mortmaine, conſent to the ravither and the like, becauſe that for thefe no action doth lye, and if no action can be brought, there can be neither Voucher, Writ of Warrantia cartæ, nor Rebutter, and they continue in fuch plight and eſſence as they were by their original creation, and by no Act can be diſplaced or deveſted out of their originall eſſence, and therefore cannot be bound by any Warranty. (c) Lib.10 fol.97. b. Seymores caſe. 22 Aſſ.pl.28.31 Aſſ.p.13. 4 Aſſ.p.6. 33 E.3. Gar.74.

(d) And albeit a woman may have a Writ of Dower to recover her Dower, yet becauſe her title of Dower cannot be deveſted out of the originall eſſence, a collateral Warrantie of the Anceſtor of the woman ſhall not barre her. So it is of a feoffement Cauſa matrimonii prælocuti. (d) 34 E.3 tit. droit.72. 21 E.4.82.

(e) A warrantie doth not extend to any Leaſe, though it be for many thouſand years, or to eſtates of Tenant by Statute Staple, or Merchant, or Elegit, or any other Chattle, but only to Freehold or Inheritances, as it appeareth in all Littletons Caſes, which he putteth in this Chapter. And this is the reaſon, that in all Actions which Leſſee for yeares may have, a Warrantie cannot be pleaded in barre, as in an Action of Treſpaſs, or upon the Statute of 5 R. 2. and the like. But in thoſe Actions when the Freehold or Inheritance do come in queſtion, there the Warrantie may be pleaded. But in ſuch Actions which none but a Tenant of the Freehold can have, as upon the Statute of 8 H. 6. Aſſiſe, or the like, there a Warrantie may be pleaded in barre. (e) 21 E.4.18 8.2 H.7 12 22.11 H.7.15.16. 20 H.7 2.b. 14 H.7.22. 43 E.3 25 per Finch. in quar. imp.15 H.7.3.lib. 10.fol.97.

¶ *Quant Garrantie eſt fait a vn home ſur eſtate, que adonques il auoit, ſi leſtate ſoit defeat, le Garrantie eſt defeat.* Here it appeareth, that although a collateral Warranty be deſcended, (f) yet if the ſtate whereunto the Warrantie was annexed be defeated, albeit it be by a meer ſtranger, (as in this caſe that Littleton here put by the Diſcontinuee) the Warrantie is defeated and although the Diſcontinuance remain, and no Rebutter brought to the heire, yet the Warrantie is defeated, and barre removed, ſo as the iſſue in taile may have his Formedon, and recover the Land. Sublato Principali tollitur adjunctum. (f) 3 H.7. 9.b. 16 E.3. tit. Continual Claime 10. 9 H.4.8. Pl. Com. 158.

Sect. 742.

¶ Eſmeſme le manner eſt, ſi le diſcontinuee fait feoffement en fee, reſeruant a luy vn certaine Rent, & pur default de payment vn re-entry &c. & vn collateral Garrantie de anceſtor eſt fait a ceſty feoffee que ad eſtate ſur condition, &c. & mozuſt ſans iſſue, coment que cel Garrantie diſcēdet ſur iſſue en taile, vncore ſi apres le rent ſoit aderet et le diſ-

IN the ſame manner it is, if the diſcontinuee make a feoffement in fee, reſerving to him a certain rent, and for default of payment a re-entrie, &c. and a collateral Warrantie of the Anceſtour is made to the Feoffee that hath the eſtate upon condition, &c. and dieth without iſſue, albeit that this warranty ſhall deſcend upon the iſſue in tayle, yet if after the rent be behind, and the

diſcontinuée entra en la terre, adonqz auera liſſue en taile ſon recouery p̄ briefe de Formedon, pur ceo q̄ le collateral garranty eſt defeat. Et iſſint ſi aſcun tiel collateral garranty ſoit pleď enuers liſſue en le taile, en ſon action ď Formedon, il poit mſer le matter come eſt auantdit, coment le garrantie eſt defeat, &c. & iſſint il poit bien maintener ſon action, &c.

diſcontinuee enter into the Land, then ſhall the iſſue in taile have his recovery by Writ of *Formedon*, becauſe the collateral warranty is defeated. And ſo if any ſuch collateral Warranty be pleaded againſt the iſſue in taile in his action of *Formedon* he may ſhew the matter as is aforeſaid, how the warrantie is defeated, &c. and ſo he may well maintain his action, &c.

HEre Littleton putteth another caſe upon the ſame ground and reaſon, viz. where the ſtate whereunto the warranty is annexed, is defeated, there the Warrantie it ſelf is defeated alſo, which is one of the maxims of the Common Law.

Sect. 743.

ITem, ſi Tenant en taile fait vn feoffement a ſon vncle, & puis luncle fait vn feoffement en fee ouesque Garrantie, &c. a vn auter, & puis le feoffé del vncle enfeoffa arere-maine luncle en fee, & puis luncle enfeoffa vn eſtrange en fee ſans Garrantie & mozuſt ſauns iſſue, & le Tenant en tayle mozuſt, ſi iſſue en le taile voyle poꝛſ ſon bř de Formedon, enuers leſtrange que fuit le darrein feoffé, & ceo per luncle, liſſue ne ſerra vnque barre per le Garrantie que fuit fait per le vncle al dit primer feoffé de ſon vncle, pur ceo que le dit Garrantie fuit defeat & anient, pur ceo que luncle a luy repriſt cy grand eſtate de ſon primer feoffé a que le Garrantie fuit fait, ſicome il le feoffé auoit de luy. Et la cauſe pur que le Garrantie eſt anienten ceo caſe, eſt ceo, ſ. que ſi le Garrantie eſtoieroit en ſa force, donque lunc' Garrāteř a luy meſme, que ne poit eſtre.

ALſo if Tenant in taile make a feoffement to his uncle, and after the uncle make a feoffement in fee with warranty, &c. to another, and after the feoffee of the Uncle doth re-enfeoffe again the Uncle in fee, and after the Uncle enfeoffeth a ſtranger in fee without Warrantie, and dieth without iſſue, and the Tenant in tayle dieth, if the iſſue in tayle will bring his Writ of *Formedon* againſt the ſtranger that was the laſt feoffee, and that by the Uncle, the iſſue ſhall not be barred by the warranty that was made by the Uncle to the firſt feoffee of his Uncle, for that the ſaid Warrantie was defeated and taken away becauſe the Uncle took back to him as great an eſtate from his firſt feoffee to whom the Warranty was made, as the ſame feoffee had from him. And the cauſe why the Warranty is defeated, is this, *viz.* that if the Warranty ſhould ſtand in his force, then the Uncle ſhould warrant to himſelf, which cannot be.

Per

HEre Littleton putteth another caſe, where a Warranty may be defeated, as when the Uncle taketh back as large an eſtate, as he had made, the Warranty is defeated becauſe he cannot warrant Land to himſelf. (g) And ſo it is if the Uncle had made the Warranty to the Feoffee his heirs and aſſignes, and taken back an eſtate in fee, and after infeoffed another, yet the Warranty is defeated, for that he cannot be Aſſignee to himſelf, and a man ſhall not regularly vouch himſelf as Aſſignee of a fee ſimple, and the Law will not ſuffer things inutile and unprofitable. (h) And yet if the father be infeoffed with Warrantie to him and his heirs, the father infeoffeth his heir apparant in fee and dieth, he (as it hath been ſaid) ſhall vouch himſelf, and the heir in deſcow Engliſh by reaſon the act in Law determined the Warranty between the father and the ſonne.

(i) But if a man maketh a feoffement in fee with Warrantie to the Feoffee his heires and aſſignes, and the Feoffee re-enfeoffeth the Feoffor and his wife, or the Feoffor and any other ſtranger, the Warranty remaineth ſtill, or if two do make a feoffement with Warranty to one and his heires and aſſignes, and the Feoffee re-enfeoffe one of the Feoffors, the warrantie doth alſo remain.

(g) Temps E.1. Voucher 166. 40 E.3.14.42 E.3. 38.25 E.3.43 b. 26 E.3. 68.14 E.3. Vouch. 106. 16 E.3. Voucher 87.19. E.3. Vouchee 122 17 E.3. 73,74. 20 H.6.19.

(h) 40 E.3.14.2. 41 E.3. 25.2.

(i) 11 H.4.20.42.17 E.3 47.59.18 E.3 56.29 E. 3.46.39. E.3.9.

Sect. 744.

¶ MEs ſi le feoffé feſoit eſtate al vncle p̄ terme de vie, ou en taile, ſauant le reuerſion, &c. ou que il fait done en taile al Uncle, ou vn leas pur term̄ de vie, le remainder ouſter, &c. en ceſt cas le garrantie neſt pas tout ouſterment anient, mes eſt mis en ſuſpence durant leſtate que luncle ad. Car apres ceo que luncle eſt mort ſans iſſue, &c. donques celuy en le reuerſion, ou celuy en le remainder barreroit iſſue en tayle en ſon briefe de Formedon per le collateral Garrāty en tiel cas, &c. Mes auterment eſt lou luncle auoit auxy graund eſtate en la terre de le Feoffé, a que le Garrantie eſt mis en ſuſpence.

BUt if the Feoffee had made an eſtate to his uncle for terme of life, or in taile, ſaving the reverſion, &c. or a gift in tail to the Uncle, or a Leaſe for term of life, the Remainder over, &c. In this caſe the warrantie is not altogether taken away, but is put in ſuſpēce during the eſtate that the Uncle hath. For after that, that the Uncle is dead without iſſue, &c. then he in the Reverſion, or he in the Remainder ſhall barre the iſſue in taile in his Writ of *Formedon* by the collateral warranty in ſuch caſe, &c. But otherwiſe it is where the uncle hath as great eſtate in the Land of the Feoffee to whom the Warrantie was made, as the Feoffee

¶ *Pur terme de vie, ou en taile.* Here it appeareth (k) that by taking a (l) Leaſe for life, or a gift in taile, the Warrantie is ſuſpended.

A man infeoffeth a woman with warranty, they intermarry and are impleaded, upon the default of the husband, the wife is received, ſhe ſhall vouch her husband, &c. notwithſtanding the Warranty was put in ſuſpence. (m) And ſo on the other ſide, if a woman infeoffe a man with Warranty, and they intermarry & are impleaded, the husband ſhall vouch himſelf and his wife by force of the ſaid Warrantie.

(n) An infant en ventre ſa mere may be vouched if God give him a birth, and if not, ſuch a one heir to the warrantie, but he cannot be vouched alone without the heir at the Common Law, for Proces ſhall be preſently awarded againſt him.

¶ *Mes eſt miſe en ſuſpence.* (o) Tenant in Tayle maketh a feoffement in fee with Warrantie, and diſſeiſeth the Diſcontinuee, and dyeth ſeiſed, leaving Aſſets to his iſſue. Some hold that in reſpect of this ſuſpended Warranty and Aſſets, the iſſue

(k) 16 E.3. Vouch. 87. 44 E.3.26 E.3 56. 17 E.3.47.10 E.3.30. 12 E.3. Counterplea de vouch. 42.14 E.3.ib.12.

(l) 6 E.3. Vouch. 257. 3 E.3 ibid 201. 5 E.3.ib. 178.18 E.3.52. 14 E.3. Vouch. 109.21 E.3.ibid. 25.43.37.44 E.3.38. 32 E.3. Voucher 102.

(m) 4 E.2. Voucher 243. 240.

(n) Temps E.1. Gard. 153 31 E.1 Briefe 873.8 E.2 Vouch. 237.11 E.3.ibid. 13.11 E.2 quar. imp. 158 38 E.3.7.& 29.41 E.3. in Dower. 9 H.6.24. Pl. Com. Stowels caſe per. Saunders & Browne.

(o) 21 E.3.36.2. & b. 38 E.3.21. 44 E.3.26. 45 E.3. Title 31.44 E.3. ibid. 31.33 E.3.ibid.4.

ſſue in taile ſhall not be remitted, but that the Diſcontinuee ſhall recover againſt the iſſue in taile, and he take advantage of his Warrantie, if any he hath, and after in a Formedon brought by the iſſue, the Diſcontinuee ſhall barre him in reſpect of the Warranty and Aſſets; and ſo every mans right ſaved.

rantie fuit fait, come le Feoffé auoit de luy, Cauſa patet.

hath himſelf. *Cauſa patet.*

Sect. 745.

Sect. 733. 706.

¶ *Ou releaſe fait per luy oue garrantie.* Note a Warrantie grounded upon a Releaſe. Hereof you ſhall reade before in this Chapter.

¶ Item, ſi l'uncle apres tiel feoffement fait oue Garrantie, ou releaſe fait per luy oue Garranty ſoit attaint de felony, ou vtlage de felony, tiel collateral Garrantie ne barrer̄ my, ne greuera liſſue en le taile, pur ceo que per le attainder de felonie, le ſanke eſt corrupt enter eux, &c.

ALſo if the uncle after ſuch feoffment made with Warrantie, or a releaſe made by him with Warranty, be attaint of felony, or outlawed of felony, ſuch collaterall Warrantie ſhall not bar nor grieve the iſſue in the taile, for this that by the attainder of felony, the bloud is corrupted between them, &c.

8 E.2. Voucher 237.

¶ *Soit attaint de felony, ou vtlage, &c.* Note according to Littleton here, there be two manner of Attainders, the one is after apparance, and that in three manners, by Confeſſion, by Battel, or by Verdict, the other upon Proces, to be Outlawed, which is an attainder in Law. But (as hath been ſaid) there is a great diverſity, as to the forfeiture of Land, between an Attainder of felony by Outlawry upon an Appeal, and upon an Inditement: for in the caſe of an Appeal, the Defendant ſhall forfeit no Lands, but ſuch as he had at the time of the Outlawrie pronounced, but in caſe of Inditement, ſuch as he had at the time of the felony committed, and the reaſon of this diverſitie is evident, for the in the caſe of Appeal there is no time alleaged in the Writ when the felony was done, and therefore of neceſſity it muſt relate in that caſe only to the judgement of the Outlawry: but in that caſe of Inditement, there is a certain time alleaged, and therefore in that caſe it ſhall relate to the time alleaged in the Inditement when the felony was committed. But in the caſe of the Inditement there is alſo a diverſitie to be obſerved, (o) for as hath been ſaid, it ſhall relate to the time alleaged in the Inditement for avoiding of eſtates, charges, and incumbrances, made by the Felon after the felony committed, but for the mean profits of the Land it ſhall relate only to the judgement, aſwell in this caſe of Outlawrie, as in other caſes. And where Littleton ſaith, (Attaint de felony) if a man be convicted of felony by verdict, and delibered to the Ordinary to make Purgation (p) he cannot be vouched, for that the time of his purgation (if any ſhould be) is uncertain, and the Demandant cannot be delayed upon ſuch an uncertainty, but the Tenant is not without remedy, for he may have his Warrantia cartæ.

(o) 33 E.3. Forfeiture 30. 38 E.3. 13. E.4. 25. 19 E.4. 2. Pl. Com. 488. b.

(p) 8 E.2. Voucher 237. Vid. 38 E.3. 19. b. Simile.

¶ *Attaint.* Of this word hath been ſpoken in the ſecond Book in the Chapter of Villenage.

Upon ſeveral Attainders of Felonies, there lye three ſeveral writs of Eſcheate, viz. (*) Firſt, when he hath judgement to be hanged. Secondly, when he is Outlawed. Thirdly, when he abjureth the Realm.

(*) Dame Hales caſe in Pl. Com. fol. 262.

(q) 8 E.2. Judgment 225

(q) The Defendant in an Appeal of death did wage battel, and was ſlain in the field, yet Judgement was given that he ſhould be hanged, and the Juſtices ſaid that it is altogether neceſſary, that ſuch a Judgement be given, for otherwiſe the Lord could not have a Writ of Eſcheate.

(r) 15 E.3. Petition 2.

(r) And in Eire it hath been ſeen, that a man hath been attainted after his death by preſentment, &c. The difference between a man Attainted and Convicted, is, that a man is ſaid Convict before he hath judgement, as if a man be convict by Confeſſion, Verdict, or Recreancie. And when he hath his judgement upon the Verdict, Confeſſion, or Recreancy,

Recreantie; or upon the Outlawrie, or Abiuration, then he is said to be Attaint. And thus is the Law taken at this day, notwithstanding (f) some diversitie of opinions in our Bookes.

(f) 40 E.3 12.3 E.3. Corone 65 8 E.2. ibid. 293 21 H.7.

If a Felon be convicted by Verdict, Confession, or Recreantie, he doth forfeit his goods and Chattels, &c. presently. (t) For where a reason hath been yelded in our Bookes, that the praying of his Clergie, was a refusal of the judgement of the Law, and a flight in Law, and for that cause he forfeited his goods and Chattels, that doth not hold, for if a man be convict of petty Treason, or Murder, or any other crime, for which he cannot have his Clergy, yet by the very Conviction he forfeiteth his goods and Chattels before Attainder. And (u) Stanford (speaking of a Felon convict by Verdict) saith, that he shall forfeit his goods, which he had at the time of the Verdict given, which is the Conviction in that case, and by the Statute of 1 R. 3. cap 3. no Sheriff, Bayliffe, &c. shall seise the goods of a Felon before he be convicted of the Felony, whereby it appeareth that the goods may be seised as forfeit after conviction. And the (x) old Statute is worthy of noting, Provisum est in curia nostra coram Justiciariis nostris, quod de cetero nullus homo capiatur pro morte hominis vel alia felonia pro qua debet imprisonari, dissisietur de terris & tenementis vel catallis suis quousque convictus fuerit. So as by a Conviction of a Felon, his goods and Chattels are forfeited, but by Attainder, that is by Judgement given, his Lands and Tenements are forfeited, and his blood corrupted and not before.

(t) Stanf. Pl. Cor. fol 192. Lib. 9. fol. 110. Foxleyes case, Vide 7 H. 4. 11. 1 R. 3. cap. 3.

(x) Statute de catallis felonum ver. Magna Carta, fol. 66. 2. part.

(y) If the partie upon his Arraignment refuse to answer according to Law, or say nothing, he shall not be adjudged to be hanged, but for his contempt, to pain fort & dure, which worke no Attainder for the Felony, nor forfeiture of his Lands or corruption of blood. But in case of High Treason, if the party refuse to answer according to Law, or say nothing, he shall have such judgement by attainder, as if he had been convicted by verdict or confession.

(y) Stanf. Pl. Cor. 139 185.

¶ *Felony.* (*) Ex vi termini significat quodliber capitale crimen felleo animo perpetratum, in which sense Murder is said to be done per feloniam, and is so appropriated by Law, as felonicè cannot be expressed by any other word. (a) And in antient times this word (felonicè) was of so large an extent as it included High Treason; and therefore in our antient Bookes, by the pardon of all Felonies, High Treason, or counterfeiting of the Great Seal, and of the Kings Coine, &c. was pardoned. (b) But afterwards it was resolved, that in the Kings Pardon or Charter, this word (Felonie) should only extend to common Felonies, and that High Treason should not be comprehended under the same, and therefore ought to be specially named. And yet that a pardon of all Felonies should extend to Petite Treason, wherefore by the Law at this day under the word (Felony) in Commissions, &c. is included Petite Treason, Murder, Homicide, burning of Houses, Burglarie, Robberie, Rape, &c. Chance-medly, se defendendo, and Petite Larceny. (c) For such of these crimes for the which any shall have this Judgement, to be hanged by the neck till he be dead, he shall forfeit all his Lands in Fee simple, and his goods and Chattels: for Felony by Chance-medly, or se defendendo, or Petite Larceny, he shall forfeit his goods and Chattels, and no Lands of any estate of Freehold or Inheritance. And all Felonies punishable according to the course of the Common Law, are either by the Common Law, or by Statute. There is also a Felony punishable by the Civil Law, because it is done upon the high Sea, as Pyracy, Robbery, or Murder, whereof the Common Law did take no notice, because it could not be tryed by twelve men. If this Pyracy be tryed before the Lord Admiral in the Court of the Admiralty, according to the Civil Law, and the Delinquents there attainted, yet shall it worke no corruption of blood, nor forfeiture of his lands, otherwise it is if he be attainted before Commissioners by force of the Statute of (d) 28 H. 8. By the expresse purview of that Statute about the end of the reign of Queen Elizabeth certain English Pyrats that had robbed on the Sea Merchants of Venice in amity with the Queen being not known, obtained a Corporation pardon, whereby amongst other things the King pardoned them all Felonies. It was (e) resolved by all the Judges of England upon conference and advisement, that this did not pardon the Pyracy, for seeing it was no Felonie whereof the Common Law took Conusance, and the Statute of 28 H. 8. did not alter the offence, but ordain a trial and inflict punishment, therefore it ought to be pardoned specially, or by words which tant amount, and not by the general name of Felony, and according to this resolution the Delinquents were attainted and executed.

(*) Glanvil. lib. 14. ca. 15. Malbr. ca. 25. W. 1. c. 15.

(a) 2 E. 4 14 18 E. 4. 10. 23 Ass. 49. 1 E. 3. 13. Stanf. Pl. Cor. 102. E. 8 H. 4. 2.

(b) 22 Ass. 49.

(c) Stanf. prær. 45. b. 16 E. 3. Coron. 18. & 3 E. 3. Coron. 302.

(d) 28 H. 8. cap. 15.

(e) Hill. 2. Jac. Regis. Vide Mich. 7. & 8. Eliz. Dier 241. 14 Eliz. Dier 308.

Pyrate commeth of the word πειρατης which signifieth a Robber at Sea, Attainder of heresie, or Præmunire worketh no corruption of blood; nor heresie, forfeiture of lands, but in case of Præmunire, forfeiture of lands in fee simple, but not of lands in taile, as formerly had been said.

(f) Statute de Magna moneta tempore E. 1. 35 E. 1. de Carlisle, 20 E. 3. cap. 4.

(f) By some Statute it is said, Sur forfeiture de corps & de auoire, or Sub forisfactura omnium quæ in potestate sua obtinet, or to be at the Kings will, body, lands and goods, and the like, these are not extended to the loss of life or member, but to imprisonment, lands and goods. (g) But if an Act of Parliament saith, Eeit iudgement de vie & member, or subeat judicium vitæ vel membrorum, in that case judgement of death shall be given, as in case of Felonie, viz. that he be hanged

(g) W. 3. ca. 34. Rot. Parl. 25 E. 1. 1 E. 2. de trang. prisonam. 14 E. 3. cap. 10. Stanf. Pl. Coron. 30, 31. 3 E. 2. Coron. 153. Brook tit Coron 203. 9 E. 4. 26.

hanged by the neck till he be dead, and consequently his bloud is corrupted, (as our Author here saith) and shall forfeit as in case of Felonie.

(h) There is also a Court of the Constable and Marshal, who have Conusance of Contracts of Deeds of Armes, and of warre out of the Realm, and also of things touching warre within the Realm, which may not be determined or discussed by the Common Law, and also all Appeals of offences done out of the Realm, and they proceed according to the Civil Law: but these things more properly pertain to another kind of Treatise, and therefore I shall speak no more thereof in this place, but only for the satisfaction of the studious Reader, to quote some Authorities of Law touching the jurisdiction of that Court, that he may have some taste thereof.

In the same manner it is, if a man be attainted of High Treason, the Warranty is also defeated.

¶ *Le sanke est corrupt enter eux, &c.* * Aptly is a man said to be attainted, attinctus, for that by his attainder of Treason or Felony his bloud is so stained and corrupted, as first, his Children cannot be Heires to him, nor to any other Ancestor, and therefore the Warrantie cannot bind, for thereby Heires only are to be bound.

Secondly, If he were noble or gentle before, he and all his children and posterity are by this Attainder made base and ignoble, in respect of any Nobility or Gentrie which they had by their birth.

Thirdly, This corruption of bloud is so high, that regularly it cannot be absolutely salved but by authority of Parliament: All which is implyed in the same (&c.)

(h) Bract. lib. 4. fol. 248 48 E. 3. 13 R. 2. cap. 2. Rot. Parl. 21 R. 2. nu. 19. 8 H. 4. c. 14. 13 H. 4. 4. & 5. 37 H. 6. 21 Rot. Parl. 8 R. 2. nu. 31. Fortesc. cap. 32. Rot. Parl. 2 H. 4. 74. 11 H. 4. 24. 30 H. 6. 6. Stanf. Pl. Cor. 6 f. Stat. de Assignat. 4 E. 1. Er. Cor. 190. Rot. Parl. 2 H. 6. nu. 9 Rot. Parl. 5 H. 4. nu. 39. Rot. Vast. 9 H. 4. nu. 14. 8 H. 6. nu. 38. 21 E. 4. 17. b. Catesby: 20 H. 7. per Vavasor. 18 E. 2. Quar. imp. 175. 6 E. 3. 41. Pasc. 14 E. 3. in Scac. le Count de Kent: case, p. 39 E. 3. cor. Reg. Rot. 49 le Count de Lanc case. Rot. Parl. 28 E. 3. nu. 8. Mortimers case, Rot. Parl. 28 E. 3. nu. 13, Le Countee de Arundels case.

*Stanf. lib. 3. Pl Cor. 1. 9. b. 27 E. 3. 77. 13 H. 4. 8. Vid. Lit. lib. 1. in the Chap. of Dower.

Sect. 746, 747.

¶ *Le issue en Taile poit enter.* And the reason is, For that by the attainder of the Father, it is now in judgement of Law but a Release without warranty, for albeit the warrantie at the time of the Release was effectual, yet it worketh no discontinuance unless it descendeth upon the Issue in Taile, so as if it be defeated, extinct, or determined in the life of the Tenant in Taile, then no discontinuance is wrought: and so it is if Tenant in Taile hath issue, and releaseth to the Disseisor with warrantie, & after is attainted of felonie, and after obtaineth his pardon and dieth, the Issue in Taile may enter; * for the Pardon doth not restore the Bloud, as to the warrantie nor maketh the Issue in that case inheritable to the warrantie. But if the Issue in Tail in that Case had been attainted of Felonie in the life of his Father, and obtained his Charter of Pardon, and then his Father had died, the issue cannot enter into the

¶ Item, si Tenãt en Taile soit disseisie, & puis fait release al Disseisor oue Garrantie en fee, & puis le Tenant en Taile est attaint, ou utlage de Felony, & ad issue & morust, en cest case lissue en taile poit enter sur le Disseisor. Et la cause est, pur ceo que rien fait discontinuance en cest case forsque le Garrantie, & Garrantie ne poit discender al Issue en taile, pur ceo que le sanke est corrupt perenter celuy que fist le Garrantie & Issue en Taile.

ALso if Tenant in Taile be disseised, and after make a Release to the Disseisor with Warranty in Fee, and after the Tenant in Taile is attaint or outlawed of felony, & hath issue & dieth; In this case the Issue in Taile may enter upon the Disseisor: and the cause is, for this; that nothing maketh Discontinuance in this case but the Warrantie, & Warrantie may not descend to the Issue in Taile, for this, that the bloud is corrupt between him that made the Warrantie, and the Issue in Taile.

*27 E. 3. 77. 1 E. 3. 14. 6 E. 3. 155. 9 H. 5. 9. 3 E. 1. Discont. 17. 46 E. 3. Petit. 20. 26 Ass. 2. 49. Ass. 4. 29 Ass. 11. 13 H. 4. 8. 13 H. 7. 17. Pl. Com. in Walsinghams case. 3 E. 2. Discent. Br. 64. Stanf. Pl. Cor. 195, 196. See in the Chapter of Tenant by the Curtesie, touching this matter.

Sect. 747.

¶ CAr l' Garranty touts foits demurt a l' Common Ley, et la Common Ley eſt, Que quant home eſt attaint ou vtlage de Felonie, quel vtlagarie eſt vn attainder en Ley, que le ſanke perenter luy et ſon fits, et touts auters queux ſerra dits ſes heires eſt corrupt, iſſint que riens per diſcent poit diſcender a aſcun que poit eſtre dit ſon hẽe per le Common Ley. Et la Feme de tiel home que iſſint eſt attaint de felonie, ne ſerra iammes endow de les Tenements ſa Baron iſſint attaint. Et la cauſe eſt pur ceo que homes plus eſchuerent de fait aſcuns felonies. Mes iſſue en Tayle quant a les Tenements tailes neſt pas en tiel cas barre, pur ceo que eſt enherit per force de le Statute, & neny per le courſe de Common Ley, et pur ceo tiel attainder de ſon pier ou de ſon anceſtor en le Tayle, ne luy ouſter de ſon droit per force de le taile, &c.

FOr the Warrantie alwayes abideth at the Common Law, and the Common law is ſuch, That when a man is attaint or outlaw'd of felony, which Outlawrie is an Attainder in Law, that the bloud between him and his ſonne, and all others which ſhall be ſaid his heires, is corrupt, ſo that nothing by diſcent may deſcend to any that may be ſaid his heire by the Common Law: And the wife of ſuch a man that is ſo attaint ſhall never be endowed of the Tenements of her husband ſo attainted. And the cauſe is, for that men ſhould more eſchew to commit Felonies. But the Iſſue in Taile as to the Tenements tailed is not in ſuch Caſe barred, becauſe he is inheritable by force of the Statute, and not by the courſe of the Common Law: And therefore ſuch attainder of his Father or of his Anceſtour in the Taile, ſhall not put him out of his Right by force of the Taile, &c.

Land in reſpect of the corruption of bloud upon the Attainder of himſelf. (h) And it is a general rule, That having reſpect to all thoſe whoſe bloud was corrupted at the time of the attainder, the Pardon doth not remove the corruption of Blood neither upward nor downward. As if there be Grandfather, father, and ſon and the Grandfather and father have divers other ſons, if the father be attainted of Felonie & pardoned, yet nory the bloud remain corrupted not onely above him and about him, but alſo to all his children born at the time of his attainder. But in the caſe of Littleton, if Tenant in Taile at the time of his attainder had no Iſſue, and after the obtaining of his pardon had iſſue, that Iſſue ſhould have been bound by the Warrantie, for by the pardõ he was as a new creature, Tanquam filius terræ, whoſe bloud upwards remain corrupted, but for the Iſſue had after the Pardon, he is inheritable to his Father, and if his father had Iſſue before the Pardon, and had iſſue alſo after and dieth, nothing can deſcend to the youngeſt, for that the eldeſt is living and diſabled. But if the eldeſt ſonne had died in the life of the father without Iſſue, then the youngeſt ſhould inherit.

(h) Brict. lib. 3. fol 132, 133. 276. & lib. 5. 374. Brit. fol. 215. b. Flet. lib. 1. cap. 28.

¶ *Le Garrantie demurt al Common Ley.* The Collateral Warranty is not reſtrained by the Statute of Donis conditionalibus, but a lineal Warranty is reſtrained by the Statute, unleſs there be Aſſets, as formerly at large hath been ſaid.

Vid. Sect. 711, 712.

¶ *Et la Feme de tiel hõe que iſſint eſt attaint, &c. ne ſerra iammes endow, &c.* It is to be obſerved, That the judgement againſt a man for felonie, is, that he be hanged by the neck until he be dead, but implicative, (as hath been ſaid) he is

punished first in his wife, That she shall lose her Dower. Secondly, In his children, That they shall become base and ignoble, as hath been said. Thirdly, That he shall lose his posterity, for his blood is stained and corrupted, that they cannot inherit unto him or any other Ancestor. Fourthly, That he shall forfeit all his lands and tenements which he hath in Fee, and which he hath in Taile, for term of his life. And fifthly, All his Goods and Chattels. And thus severe it was at the Common Law, and the reason hereof was, That men should fear to commit Felonie, Ut pœna ad paucos, metus ad omnes perveniat. And it is truly said, Etsi meliores sunt quos ducit amor, tamen plures sunt quos corrigit timor. And so it is à fortiori in case of High Treason. But some Acts of Parliament have altered the Common Law in some of these points: First. By the Statute of Donis conditionalibus, Lands intailed were not forfeited neither for Felony, nor for Treason, but for the life of Tenant in Taile: This Act was made by King Edward the first, who (as our Books (i) speak) was the most sage King that ever was: (k) & the cause wherefore this Statute was made, was to preserve the Inheritance in the blood of them to whom the gift was made, notwithstanding any attainder of Felonie or Treason. And this Act in History is called Gentilitium municipale. For that by this Act the families of many Noblemen and Gentlemen were continued and preserved to their posterities. And this Law continued in force from the thirteenth year of King Edward the first, until the (l) twenty sixth year of King Henry the eighth, when by Act of Parliament Estates in Taile are forfeited by attainder of high Treason. But as to Felonies (whereof our Author here speaketh) the Statute of Donis conditionalibus doth yet remain in force, so as for attainder of Felony Lands or Tenements entailed are not forfeited, but only (as hath been said) during the life of Tenant in Taile, but the Inheritance is preserved for the Issues.

(i) 5 E. 3. 14. 9 E. 3. 22.
(k) 7 H. 4. 32. 19 H. 6. 71. See Lit. lib. 1. cap. Dow. Sect. 55.

(l) 26 H. 8. cap. 13. 33 H. 8. cap. 20. 5 E. 6. cap. 11.

(m) The wife of a man attainted of high Treason or petit Treason, shall not be received to demand Dower, unless it be in certain cases specially provided for. But the wife of a person attainted of Misprision of Treason, Murther, or Felonie is dowable since our Author wrote, (n) by the Statute in that case made and provided, which is more favourable to the woman than the Common Law was.

(m) Stanf. Pl. Cor. 195.

(n) 1 E. 6. ca. 13. 5 E. 6. ca. 11. 5. el cap. 1. & 11. 18. El. cap. 1. 12 H. 4. 3. Vide Sect. 55.

(o) If a Seigniorie be granted with Warrantie, and the Tenancy escheat, the Seigniorie whereunto the Warrantie was annexed is extinct, and consequently the Warrantie defeated, and it shall not extend to the Land, & sic in similibus.

(o) 6 H. 4. 1. 45 E. 3. Vouch. 72. Pl. Com. 392. 1 E. 2. Age 46. 18 H. 3. Vouch 281. 23 & 3. Garr. 77.

If a Collateral Ancestor release with Warrantie, and enter into Religion, now the Warranty doth bind; but if after he be deraigned, now it is defeated.

See in the Chapter of Villenage, Sect. 200.

Sect. 748.

LIttleton having spoken in what Cases Warranties may be defeated and extinguished by matter in Law, now he sheweth how a Warranty may be discharged or defeated by matter in Deed: and hereupon he putteth an example of a Release in three several manners:

First, By a Release of all Warranties.

Secondly, By a Release of all Covenants real.

And thirdly, By a Release of all demands.

Vide Lib. 8. fol. 153, 154. Althams Case. 46 E. 3. 2. 45 E. 3. 23. Vid. before in the Chapter of Releases. Sect. 508.

(q) If a man make a gift in Taile with Warrantie, this Warrantie is also intailed, and therefore a Release made by Tenant in Taile of the Warrantie, shall not bar the issue, no more than his Release shall bar the issue to bring an attaint upon a false verdict, or a writ of error upon an erroneous

(q) 14 Ass. pl. 2. 3 Eliz. Dyer. 188. 9 E. 4. 52. b.

¶ Item, si Tenant en le Taile enfeoffa son Uncle, l'quel enfeoffa un auter en fee oue Garr' &c. si apres l'feoffee p̄ fait release a l'Uncle touts manners des Garranties, ou touts manners de Covenants real ou touts manners de dues, p̄ tiel Release le Garrantie est extinct. Et si le Garrantie en cel case soit pleade enuers le heire en taile, que porta son Briefe de

¶ Item, If Tenant in Taile infeoffe his Uncle, which infeoffes another in Fee with warr', if after the Feoffee by his Deed release to his Uncle all manner of Warranties, or all manner of Covenants reall, or all manner of Demands, by such Release the Warrantie is extinct. And if the Warrantie in this case be pleaded against the Heire in Taile that bringeth his Writ of *Formé-*

de Formedon p barrer le heire de ſon action, ſi heire auoit le dit releas & ceo pledast, ſi deſetera le plee barre, &c. Et multes autres caſes et matters y ſont, per quix home poit defeater garrantie, &c.

don, to barre the heire of his action, if the heire have and plead the ſaid releaſe, &c. he ſhall defeat the plee in barre, &c. and many other caſes and matters there be, whereby a man may defeat a Warrantie, &c.

judgement given againſt the father, nor his gift can barre the iſſue of the Deed that create the eſtate taile, nor of any other Deed neceſſary for defence of the title.

¶ *Apres le feoffee releſſa.* Littleton here putteth his caſe where one is bound to warrant: put the caſe (r) then that two make a feoffement in fee, and warrant the Land to the Feoffee and his heires, and the Feoffee releaſe to one of the (r) 45 E.3.33.

Feoffors the Warrantie; yet he ſhall vouche the other for the moity. And ſo it is if one intoffe two with Warrantie, and the one releaſe the Warrantie, yet the other ſhall vouch for his moity.

¶ *Si le heire auoit le dit releaſe, &c.* Here it appeareth that the releaſe being made to the uncle being his Anceſtor, the Deed doth after the deceaſe of the uncle belong to him, and therefore he cannot plead it, unleſs he ſheweth it forth.

¶ *Et multis autres caſes & matters y ſont per queux home poet defeater Garrantie, &c.* As namely by a Defeaſance as other things executory may. Alſo a Warrantie may loſe his force by taking benefit of the ſame. In a Præcipe the Tenant voucheth, and at the Sequatur ſub luo periculo, the Tenant and the Voucher make default, whereupon the Demandant hath judgement againſt the Tenant. And afterwards the Demandant brings a Scire facias againſt the Tenant to have Execution; in this caſe the Tenant may have a Warrantia Cartæ. And if in that caſe a ſtranger had brought a Præcipe againſt the Tenant, he might have vouched again for by the judgement given againſt the Tenant the Warranty loſt not his force, but if the Tenant had judgement to recover in value againſt the Voucher, he ſhould never vouch again by reaſon of that warranty, becauſe he had taken advantage of the Warrantie. And it is to be obſerved that upon the proces of Sommonces ad warrantizandum, if the Sheriffe return the Voucher ſummoned, and he make Default, the Tenant ſhall have a Capias ad valentiam, but if he return that the Voucher had nothing, then after the Sicut alias & plures a Sequatur ſub ſuo periculo ſhall iſſue, and there if the Voucher make default, the Tenant ſhall not have Judgement to recover in value, for he was never ſummoned, and it appeareth of Record that he hath nothing, but in the Capias ad valentiam it appeareth that he had Aſſets, and he had been ſummoned before: But in ſome ſpecial caſes there ſhall be two recoveries in value upon one Warrantie. As if a Diſſeiſor give Lands to the husband and wife, and to the heires of the husband, the husband alieneth in fee with Warrantie and dieth, the wife bringeth a Cui in vita, the Tenant vouch and recovereth in value, if after the death of the wife, the Diſſeiſee bring a Præcipe againſt the Alienee, he ſhall vouch and recover in value again. 43 E.3.17. Pl.Com. in Brownings caſe.

(ſ) So it is where the wife bringeth a Writ of Dower againſt the Alienee, he ſhall recover in value, and after her death he ſhall recover in value again, upon the ſame Warrantie.

In the ſame manner it is if a man be ſeiſed of a Rent by a defeaſible title, and releaſeth to the Tenant of the Land all his right in the Land, and warranteth the Land to him and his heirs, if he be impleaded for the Rent, he ſhall vouch and recover in value for the Rent, and if after he be impleaded for the Land, he ſhall vouch and recover in value again for the Land: but in theſe and the like caſes, the reaſon is in reſpect of the ſeveral eſtates recovered, but for one and the ſame eſtate he ſhall never recover but once in value, and though the Land recovered in value be evicted, yet ſhall he never take benefit of that Warrantie after. And as Warranties may be defeated in the whole, ſo they may be defeated as to part of the benefit that may be taken of the ſame. (t) As he that hath a Warranty may make a Defeaſance not to take any benefit by way of Voucher: In the like manner that he ſhall take no advantage by way of Warrantia Cartæ, or by way of Rebutter. (ſ) 45 E.3. Voucher 72.

(t) 7 H.6.43. 13 Aſſ. 8. 13.E.3.Garr.24,25,37. 22 H.6.51. 8 H.7.6.

Sect. 749.

HEre Littleton sheweth, that in the same manner that a collateral warranty may be defeated by matter in Deed, or by matter in Law, so may to all intents and purposes a lineal Warrantie, whereof he putteth an example of a lineal Warrantie and Assets.

¶ *Et vn lineal Garrantie, &c. ouesque ceo que Assets a luy discendist, &c.* Here it appeareth by Littleton, that a lineal Warrantie and Assets is a good plea in a Formedon in the Discender; Wherein it is to be knowen that if Tenant in taile alieneth with Warrantie, and leave Assets to descend, if the issue in taile doth alien the Assets, and die, the Issue of that Issue shall recover the Land, because the lineall Warrantie descendeth only to him without Assets, for neither the pleading of the Warrantie without the Assets, nor the Assets without the Warrantie is any barre in the Formedon in the Discender. But if the Issue to whom the warrantie and Assets descended had brought a Formedon, and by Judgement had ben barred by reason of the warrantie and Assets. In that case albeit he alieneth the Assets, yet the Estate Taile is barred for ever: for a barre in a Formedon in the Discender, which is a Writ of the highest nature that an Issue in Taile can have, is a good barre in any other Formedon in the Discender, brought afterwards upon the same gift.

Temps E.1. Garr. 89. 34 E.1. ibid 88. 11 E.3. ibid. 13. 4 E.3. 24 5 E.3. 14. 40 E.3. 9. 14 H.4. 39. 24 H.8 taile Br. 33. 4 Mar. Dier 139. Lib. 10. fol. 37, 38. in Mary Portingtons case.

¶ *Et est alcauoir, que en meisme le manner come Garrantie collateral poit estre defeat pur matter en fait, ou en Ley, en meisme le manner poit lineal Garrantie estre defeat, &c. Car si lheire en taile porta Briefe de* Formedon, *& vn lineal garranty, de son ancestor enheritable per force de le Taile, soit plede enuers luy, oue ceo que assets a luy discendist de fee simple, que il ad per meisme launcestor que fist le Garrantie, si lheire que est demandant poit adnuller, & defeater le Garrantie, ceo suffist a luy. Car le Discent des auters Tenements de Fee simple ne fait riens p barrer lheire sans le Garrantie, &c.*

AND it is to be understood, that in the same manner as the Collateral Warrantie may be defeated, by matter in Deed, or in Law; In the same manner may a lineal Warrantie be defeated, &c. For if the Heire in tail bringeth a Writ of *Formedon*, and a lineal Warrantie of his Ancestor inheritable by force of the Taile, be pleaded against him, with this that Assets descended to him of Fee simple, which he hath by the same Ancestor that made the warrantie, if the Heir that is demandant may adnull and defeat the Warrantie, that sufficeth him: For the Discent of other Tenements of Fee simple maketh nothing to barre the Heire without the Warrantie, &c.

¶ *A Toy mon fitz, &c.* Here our Author calleth (as many times in these Bookes he hath done) not only his Sonne Richard, but every Student of the Law to be accounted his Son, and worthily; for that seeing our Author had the honour to be in his time the Father of the Law, and all good Students in the Law justly account themselves the Sonnes of the Law, (for otherwise they are not worthy of the profession) our Author, as a careful and provident Father, as it hath manifestly appeared, gave excellent instructions in these his Bookes, born to his own Sonne, and to his adopted Sonnes, to make them from age to age the more apt and able to understand the arguments and reasons of the Law.

¶ *Ore ieo ay fait a toy mon fits trois liures.* NOw I have made to thee my son three books.

¶ Le

¶ Le primer Liure est de Estates que homes ount en terres ou tenements: cestaſcauoir,

The first Book is of Estates which men have in Lands and tenements: That is to say,

De Tenant en Fée simple. Cap. 1
De Tenant en Fée taile 2
De Tenant en Fée taile apres possibilitie deſſue extinct 3
De tenant per le Curteſie Dengleterre 4
De Tenant en Dower 5
De Tenant a terme de vie 6
De Tenant pur terme des ans 7
De Tenant a volunt per le Common Ley 8
De Tenant a volunt per cuſtome del manno⁹ 9
De Tenant per le Clerge. 10

Le second Liure.

De Homage Cap. 1.
De Fealtie 2
De Eſcuage 3
De ieruice de Chiualer 4
De Socage 5
De Frankalmoigne 6
De Homage auncestrel 7
De grand Serieantie 8
De Petit Serieantie 9
De Tenure en Burgage 10
De Tenure en Vtlenage 11
De Rents. 12

¶ Et ceux deux petits liures ieo ay fait a toy pur le melior entender de certaine Chapters de les antient Laures de Tenures.

And theſe two little Books I have made to thee for the better underſtanding of certain Chapters of the antient Book of Tenures.

¶ *Melior entender, &c.* Into theſe Inſtitutes have I collected and publiſhed to the end that theſe three Books of our Author may be the better underſtood of the ſtudious Reader.

¶ *Antient Liure des Tenures.* This Book may well be accompted 'antient', for it was compoſed in the raign of King Edward the third, (as Iuſtice Fitzherbert ſaith) by a grabe and diſcreet man. Fitz. in his Prologue to his N. B.

Le tierce Liure.

De Parceners ſolonque le courſe del Common Ley Cap. 1.

De parceners solonque le Custome Cap. 2
De Jointenants 3
De Tenants en Common 4
De Estates de terres & tenements sz Condi-
tion 5
De Discent que tollent entries 6
De Continual Claime 7
De Releases 8
De Confirmations 9
De Attornements 10
De Discontinuances 11
De Remitters 12
De Garranties. 13

Epilogus.

IEo ne voile enprender ne presumer, &c. Here obserue the great modesty and mildnes of our Author, which is worthy of imitation; for Nulla virtus, nulla scientia locum suum & dignitatem conservare potest sine modestia. And herein our Author followed the example of Moses, who was a Judge, and the first writer of Law; for he was Mansissimus omnium hominum qui fuit in terris, as the holy History testifieth of him.

Les arguments & les reasons del Ley, &c. Ratio est anima Legis; for then are we said to know the Law, when we do apprehend the reason of the Law, that is, when we bring the reason of the Law to our own reason, that we perfectly understand it as our own, and then and never before, we have such an excellent and unspeakable property and ownership therein [illegible]

[illegible] and will direct us (the learning of the Law is so chained together) in many other Cases. But if by your study and industrie you make not the reason of the Law your own, it is not possible for you

ET tacches mon fits, Que ieo ne voil' que tu croies, que tout ceo q̄ ieo ay dit en les dits liures soit Ley, car ieo ne ceo voile enprender ne presumer sz moy. Mes de tiels choses que ne sont pas Ley enquires, & apprendres de mes sages Masters appris en la Ley. Nient meins coment que certaines choses, queux sont mises & speciñes en les dits Liures, ne sont pas Ley, uncore tiels choses serra toy plus apt & able de entender & apprender les arguments, & les reasons del ley, &c. Car p les arguments & les reasons en la Ley home pluis tost auiendra a le cer-

AND know my son, that I would not have thee believe, that all which I have said in these Bookes is Law, for I will not presume to take this upon me: But of those things that are not Law, inquire & learn of my wise Masters learned in the Law; notwithstanding albeit that certain things which are moved and specified in the said Bookes, are not altogether Law, yet such things shall make thee more apt, and able to understand and apprehend the Arguments and the reasons of the Law, &c. For by the Arguments and Reasons in the Law, a man more sooner shall come to the certain-

certaintie & a la conuſans de la ley.

tie and knowledge of the Law.

Lex plus laudatur quando ratione probatur.

long to retain it in your memorie. And well doth our Author couple arguments and reaſons together, Quia argumenta ignota & obſcura ad lucem rationis proferunt & reddunt ſplendida: and therefore argumentari & ratiocinari are many times taken for one. And that our Author may not ſpeak any thing without Authority (which in theſe Inſtitutes we have as we take it manifeſted) his opinion herein alſo agreeth with that of the learned and reverend Chief Juſtice of the Court of Common pleas. Mr Richard Hankford, (y) Home ne ſcauera de quel mettal vn campane eſt, ſi ne ſoit bien bate, ne le ley bien conus ſans diſputation. And another ſaith, (*) Ieo aye diſpute ceſt matter pur la apprender la ley. So as our Author hath made a moſt excellent Epilogue or Concluſion with a grave advice and counſel, together with the reaſon thereof, which all good ſtudents are to know and follow, and with Scire and ſequi I will conclude our Authors Epilogue.

(y) 11 H. 4. 37.
(*) 41 E. 3. 22. Kirton. Vid. Sect. 377.

¶ *Lex plus laudatur quando ratione probatur.*

This is the fourth time that our Author hath cited verſes. Vid. Sect. 384. 443. 550.

When I had finiſhed this work of the firſt part of the Inſtitutes, and looked back and conſidered the multitude of the concluſions in Law, the manifold diverſities between caſes and points of learning, the variety almoſt infinite of Authorities, Antient, Conſtant and Modern, and with all their amiable and admirable conſent in ſo many ſucceſſions of ages, the many changes and alterations of the Common Law, & additions to the ſame, even ſince our Author wrote, by many Acts of Parliament, and that the like work of Inſtitutes had not been attempted by any of our profeſſion whom I might imitate, I thought it fake for me to follow the grave and prudent example of our worthy Author, not to take upon me, or preſume that the reader ſhould think, that all that I have ſaid herein to be Law: yet this I may ſafely affirm, that there is nothing herein, but may either open ſome windows of the Law, to let in more light to the Student by diligent ſearch to ſee the ſecrets of the Law, or to move him to doubt, and withal animable him to inquire, and learn of the Sages, what the Law together with the true reaſon thereof in theſe caſes is: Or laſtly upon conſideration had of our old Books, Laws, and Records, (which are full of venerable Dignity and Antiquity) to find out where any alteration hath been, upon what ground the Law hath been ſince changed; knowing for certain, that the Law is unknown to him that knoweth not the reaſon thereof, and that the known certainty of the Law is the ſafety of all. I had once intended for the eaſe of our Student to have made a Table to theſe Inſtitutes, but when I conſidered that Tables and Abridgements are moſt profitable to them that make them, I have left that work to every ſtudious Reader. And for a farewel to our Juriſprudent I wiſh unto him the gladſom light of Juriſprudence, the lovelineſs of Temperance, the ſtability of Fortitude, and the ſolidity of Juſtice.

FINIS.

A

TABLE

To the FIRST PART

OF THE

INSTITUTES

OF THE

Laws of England:

DIGESTED into ALPHABETICAL ORDER and METHOD.

Prodeſſe, non Obeſſe.

Illud ex animo fiet, hoc præter voluntatem accidet.

LONDON,

Printed for the Company of Stationers, 1670.

TO THE

READER.

COurteous Reader, *although I have ever observed true, what our Honourable and grave Author intimates in the conclusion of this Work*, That Tables and Abridgements are most profitable to the makers, *which indeed first gave life to my endeavours in this task; yet the confidence that they are not altogether unserviceable to others, together with the undeniable importunity of some special friends, hath now wrested that to the publike view, what only was intended for private use. I hope the largeness of the Volume will apologize for the length of the Table, and its language speak somewhat in excuse of its prolixity. And because of the smalness of the Print, together with the much matter couched in every line, I have observed some notes or figures for your more speedy direction to what you are inquisitive. Divide each page with your eye into three parts, and where you meet with this note (†) it directeth to the upper part, this note (*) to the middle part, and this (¶) inviteth you to the lower part of the page, so that you may easily at the first view find what you desire, without the tedious reading over the whole page: And if you chance to miss what you seek for in the Comment, the Text will supply it unto you, or else the Printer shall be much to blame. Thus requesting you to weigh these my labours in the even balance of your indifferent judgement, I submit them to your censure, and take my leave.*

From the In. Temp.

A TABLE TO THE FIRST PART OF THE INSTITUTES OF THE LAWS OF *ENGLAND*, Alphabetically composed.

¶ Abatement.

De Etymology of the word. 114 b †.
The divers acceptions of the word, and what it properly signifies. 134 b † 277 a *.
The difference between an abatement, disseisin, intrusion, deforcement, usurpation, and purpresture. 277 a ¶ b †.

¶ Abatement of Writs. Vide tit. Writ.

¶ Abbot. Vide tit. Corporation.

¶ Abeiance.

The signification and derivation of the word. 342 a ¶ b †.
Where the freehold and inheritance of lands, &c. shall be in abeiance 342 b * ¶.
Where an estate of lands, &c. in abeiance may be aliened, or charged, and where not. 343 a * ¶.
Where by the grant of tenant in tail of all his estate, or right to a disseisor, the right of the tail shall be in abeiance. 345 a b †.
Where an entry or claim by one that hath no right shall gain an inheritance by wrong which is in abeiance. 263 † b.
The fee simple of the glebe in abeiance. 341 a † * vide tit. Parson.

¶ Abettors.

Where the Defendant in an appeal shall recover damages against the Plaintiff, and where not. 138 b 139 b *.
Vide Stat. W. 2. cap. 12.

¶ Ability. Vide tit. Capacity.

¶ Abjuration and Exile.

How a person abjured or exiled is esteemed in Law 133 a *.
Where the wife of such person may sue and be sued without naming her husband. 132 b ¶ 133 a vide tit. Coverture.
What banishment shal be said in Law a civil death, and what not. 133 a *.

¶ Abridgment.

Where by the performance or breach of a condition, the estate of the feoffee, &c. shall be abridged or enlarged, and where not. Vide tit. Condition.
Where the Lord may abridge the ancient services of his tenant by a confirmation, but cannot reserve new. Vide tit. Confirmation.

¶ Acceptance.

Where the acceptance of a rent shall dispense with a condition broken for not payment, and where not. 211 b ¶ 215 a † Vide tit. Condition.
Where the acceptance of another thing in satisfaction shall be a good bar in debt, upon an obligation, and where not. 212 b * ¶ 213 a †.
Where the acceptance of a lesser sum in satisfaction shall be a good bar, and where not. 212 b ¶.
Where the acceptance of homage or fealty shall bar the Lord of his escheate. 268 a ¶.
Where the acceptance of rent shall bar the lord of his escheat, and where not. 168 a ¶ b †.
Where the acceptance of services by the hands of the feoffee of the tenant, shall exclude the lord of his arrerages incurred before, and where not, vide tit. Avowry.
Where the acceptance of the services by the hands of the tenant after foreiudger of the mesne, shall conclude the lord paramount of the arrerages incurred before, and where not. 269 b ¶.
Where the acceptance of another thing, or estate, shall bar the wife of her dower, and where not, vide tit. Dower.
Where a man shall be remitted against his own acceptance, vide tit. Remitter.
Where the acceptance of rent the last day shall be a bar to demand arrerages incurred before. vide tit. Arrerages.
Where the acceptance of a new estate by lesse for years, &c. shall be a surrender of the first, and where not. vide tit. Surrender.
Where the acceptance of a surrender by the lesse shall conclude him to bring an action of waste, vide tit. Waste.

¶ Accessary.

In what offences accessaries may be, and in what not, 57 a ¶.

¶ Acre.

Its quantity and content. 5 b ¶.

¶ Action.

The definition of an action. 285 a †.
The division of actions. 284 b ¶ 285 a †.
The difference between an action and a writ 289. a †.
The difference between an action and an execution. 289 a *.
A feint action } what. 361 a ¶.
A false action }

The Table.

In what places and Counties actions ſhall be brought. 282 a ¶ b per tot. pag.

Where and what actions ſhall be brought in confinio Comitatus, and where and what not. vide tit. Aſſiſe.

Where in actions for things tranſitory the place or County is traverſable, and where not. 282 a ¶ b †*.

In actions tranſitory the day and time not traverſable, if the act be done before the writ brought, 283 a ¶.

Where by a releaſe of all actions, cauſes of actions be releaſed, but within a ſubmiſſion of all actions to arbitrement cauſes of actions are not contained. 285 a.

¶ Accompt.

The ſeveral kinds of writs of accompt, and againſt what perſons ſuch writ lyeth, and againſt what not, 172 a *¶.

Where in an accompt againſt one as Receiver he ſhall have allowance of expences and charges, and where not, 172 a ¶.

Where an Accomptant ſhall have allowance of goods ſtollen or miſcarryed, and where not. 89 a ¶.

Where an accompt lyeth by and againſt an Executor or Adminiſtrator, and where not, 89 b *90 b †*.

Where an accompt lyeth by one Joynttenant or Tenant in Common againſt his Companion, and where not 172 a ¶ 186 a* 200 b*.

A releaſe of all duties no bar in an account. 291 a ¶.

Where in an accompt as Receiver the defendant may wage his Law, and where not, 295 a* ¶ vide tit. Wager of Law.

Where and againſt whom a Capias lyeth in an Accompt, and where, and againſt whom not, 89 a* vide Stat. W. 2. cap. 12.

Accompt againſt Gardian in Socage, vide tit. Socage.

¶ Acquitance.

Where an acquitance for rent due the laſt day ſhall be a diſcharge for all the arrerages incurred before, vide tit. Arrerages.

¶ Acquital.

The ſignification and derivation of the word, 100 a †.

The ſeveral kinds of acquitals, ibid.

To what tenure acquital is incident, and to what not, 100 a † 101 a*.

¶ Admeaſurement.

Admeaſurement of Dower where it lyeth by the Gardian in Chivalry, and where by the heir, 39 a*.

¶ Adminiſtrator, vide tit. Executor.

¶ Admiral.

The Etimology of the word, 260 b*.

How called anciently, and how at this day, 260 b*.

The juriſdiction of the Admirals Court, and from what antiquity, and according to what Law they proceed, 260 a ¶ b † 391 a*.

¶ Admiſſion.

The deſcription and form of an admiſſion and inſtitution of a Clerk, 344 a ¶.

¶ Advowſon.

Advocatio quid, & unde, 17 b ¶ 119 b*¶.

The antiquity of the word, 17 b ¶.

How advocatio medietatis, and medietas advocationis differ, 17 b ¶ 18 a*.

Where an advowſon lies in tenure, 85 a ¶.

Where in grant, and not in livery, 332 a* 335 b*.

Where the diſſeiſee or iſſue in tail after diſcontinuance, may preſent to an advowſon before recontinuance of the Manor, to which, &c. and where not, 307 a † 333 b*.

Where and what act ſhall put the Patron out of poſſeſſion of an advowſon, and where and what not, 344 b* vide tit. Quare Imp & Preſentation.

Where an advowſon ſhall be aſſets, and how valued, vide tit. Aſſets.

Where an advowſon at one turn may be appendant, and at another in groſs, vide tit. Appendants.

Where an advowſon appendant ſhall paſs by grant of, the Manor without (cum pertinentiis) and where not, vide tit. Grants & Prærogative.

Where and how Partition may be made of an advowſon, and where it ſhall be good without deed, vide tit. Partition.

¶ Æquivocum quid, & quotuplex, 154 b ¶.

¶ Affiance, & affidare quid? 34 a ¶.

¶ Age.

Age to alien or contract what our Law requires, and what other laws, 78 b † 172 b ¶ vide tit. Infant.

Age to do Knights ſervice, vide tit. Knights Service.

The ſeveral ages of a man to divers purpoſes, 78 b ¶ 79 a ¶.

The divers ages to a woman of ſeveral purpoſes, 78 b*.

Age to be profeſſed in Religion, vide tit. Profeſſion.

Where one Parcener being an infant ſhall have her age, notwithſtanding the full age of her ſiſter, 164 a † vide tit. Paroll demurre.

A Leaſe to one and his heirs pur auter vye, the heir of the Leſſee ſhall not have his age, 139 a ¶.

Where a Baſtard ſhall have his age, 244 b †.

Where the heir upon a deſcent by reaſon of the profeſſion of his Anceſtor in religion ſhall have his age, 248 b ¶.

Where tenant for life ſurrender to him in the reverſion within age, he ſhall not have his age, 338 b †

Where the heir ſhall have his age in a ceſſavit, 380 b ¶ 381 a †.

¶ Agent and Patient.

Where a woman may indow herſelf de la pluis beal, 39 a ¶ b †.

Where an executor may pay himſelf by retainer, vide tit. Executor.

Where a man may vouch himſelf and recover in value, vide tit. Voucher & Warranty.

Where a man may limit a Remainder to himſelf, vide tit. Remainder.

¶ Agree-

The Table.

¶ Agreement and diſagreement.

Where an infant or his heirs may diſagree to his own purchaſe, 2 b ¶.
The heir of an Ideot or mad man to that of his anceſtor, ibid.
The husband or the wife her ſelf after coverture to the purchaſe of the wife, 3 a † vide tit. Coverture.
Where an agreement to the entry or act of a ſtranger ſhall be as availeable, or prejudicial to the party as his own act or entry and where not, 180 b * ¶ 207 a † 245 a *.
Where the agreement to a conveiance whereby an eſtate is after caſt upon the diſſeiſee or iſſue in tail ſhall hinder a Remitter, 359 b † vide tit. Remitter.
Where the not agreeing to an eſtate caſt upon the Tenant ſhall excuſe him of damages in a writ of Entry, vide tit. Damages.
Where a feme covert may diſagree to an eſtate determined to ſave her ſelf from damages, 380 b *.
Where a warranty deſcending ſhall hinder the diſagreement of the Feme to an eſtate made during Coverture, vide tit. Warranty.
What act ſhall be ſaid a ſufficient agreement or diſagreement to an eſtate to determine an Election, and what not, vide tit. Election & Dower.
Where an agreement in the abſence of the party to whom, &c. ſhall be good, and where not, vide tit. Attornment.
Where marriage infra annos nubiles ſhall be good by agreement after, and where void by diſagreement. vide tit. Mariage.
Where the diſcontinuee of the husband make a leaſe to the wife, the diſagreement of the husband ſhall not ouſt the Feme of her remitter. vide tit. Remitter.

¶ Aide.

Where a Parſon, Vicar, &c. ſhall have aid of his Patron, and Ordinary, 341 b *.
Where upon an avowry at this day for ſervices aid is grantable of any man, 312 a † vide ſtat. 21 H. 8. cap. 19.
Where one Copartener or her Aſſignee ſhall have aid of the other to recover pro rata, and where not, vide tit. Partition & Pareeners.
Where a Biſhop, Abbot, &c. ſhall not have aid of the King, otherwiſe of a Dean Collatibe, 341 b ¶.

¶ Aid pur fair fits Chivaler, &c. vide tit. Knights Service. & Stat. W. 1. cap. 36.

¶ Alien.

The Etymology of the word, 128 b ¶.
The deſcription of an Alien, 129 a †.
Where an Alien may be capable of lands, &c. to his own uſe, and where only to the uſe of the King, 2 b † *.
Where and by what means he may be made to inherit, and where and by what not, 8 a † 129 a *.
Where and in what actions Alien nec ſhall be a good plea in diſability of the perſon of the plaintiff, and where and in what not, 129 a † ¶ b †.
Where an alien diſſeiſor is indenized, the releaſe of the diſſeiſee after ſhall bar the King of the land, ſecus if he had been the feoffee of a diſſeiſor, vide tit. Releaſe.
The ſons of an Alien born within the ligeance of the King not inheritable either to other, 8 a †.
Where an alien may wage his law, 295 a * vide tit. Wager of law.
Where a reverſion is granted to an Alien, and after denization the Tenant attorn, the King upon office found ſhall have the land, 310 b ¶.
Where a Feme Alien ſhall have dower, and where not, vide tit. Dower.
Where an Alien may be challenged to be a Juror, vide tit. Challenge.
Vide tit. Denizen, & Ligeance.

¶ Alienation.

The derivation of the word, 118 b †.
What ſhall be ſaid an alienation to divers purpoſes, and what not, 118 b † *.
Where the reſtraint of alienation by the condition of a gift, or conveyance ſhall be good, and where not, vide tit. Condition.
When licences of alienation firſt began, and how, 43 a ¶ b †.

¶ Allegiance.

How ſuch oath firſt began, and where, and when to be taken, 68 b † 172 b †.
How it differeth from the oath of fealty, 68 b †.

¶ Allodarii ſeu Allodium quid? 1 b † 5 a *.

¶ Alnetum quid? and what paſſeth by ſuch grant, 4 b *.

Amerciament.

A Amerciament what, and whence ſo called, 126 b ¶.
How it differeth from a fine, 127 a † ¶ vid. tit. fines
The cauſes of Amerciaments in actions real and perſonal, 126 b ¶ 127 a †.
Where an Amerciament ſhall be due for the abatement of a writ, and where not 127 a †
How an amerciament anciently was called, 127 a *.
Where in debt for an amerciament the defendant ſhall wage his law, and where not, 295 a * vide tit. Wager of Law.
Where iſſues and amerciaments ſhall be levyed upon the lands which the Jurors or parties nonſuit had at the time of the panel returned, or finding of pledges, and where not, 102 b †.
Where a pardon after the action brought and before judgment ſhall diſcharge the party of an amerciament, vide tit. Pardon.
What perſons ſhall be amerced, & what not, 127 a †.

¶ Annuity,

The deſcription of an Annuity, 144 b *.
Where the heir of the grantor ſhall not be charged in an Annuity without naming, 144 b ¶.
Where the heir of the grantee, and his aſſignee may have a writ of Annuity, 144 b *.
Where and for what rent a writ of Annuity lieth againſt the grantor, and where and for what not, 144 b * † ¶.
Where it lyeth not for a rent reſerved by Indenture upon a feoffment in fee, 144 a † v. tit. Reſervat.
Where two joyning in a grant of an annuity, the grantee may have two ſeveral writs, and where but one, 144 b *.
Where it lyeth not againſt an heir by preſcription, 102 a *.
Annuity pro conſilio, &c. where grantable over, and where not, 144 a †.
What ſhall be ſaid a ſufficient act to determine the election of the grantee of a rent charge to make it an annuity or a rent, and what not, 144 b ¶ 145 a ¶ b ¶.
Where the rent charge being determined the grantee notwithſtanding ſhall have an annuity, and where not, 148 a * 150 a † 349 a ¶.
Where the cauſe of the grant of an annuity ſhall amount to a condition, and the one ceaſing, the other ſhall determine, 204 a *.

The Table.

Annuity granted in Febr. payable at Mich. and the Annunciation shall be construed to be at the Annunciation, and Mich. 217 b †. vide tit. Grants.

Where in a writ of annuity the annuity determineth hanging the writ, the arrearages are become irrecoverable. 285 a ¶.

A release of Actions reals or personal a good bar in an Annuity. 285 a ¶.

Where the annuity is not arrere, a release of all actions is no bar. 292 b ¶.

What an annuity granted by the Patron and Ordinary in time of vacation shall bind the succeeding Parson. vide tit. Parson.

Videtis, Kents.

¶ Apparance, vide tit. Default.

¶ Appeal.

The description and derivation of an Appeal. 123 b* 287 b †*.

The several sorts of appeals. 287 b*.

What shall be said a good plea in bar of an appeal of murder or felony, & what not. 287 b † ¶ 288 a † vide tit. Releases.

Where the wife shall have an appeal of the death of her husband, and where not. 33 b †.

Where the wife shall have an appeal, and yet shall not be endowed, & è converso ibid.

Where the heir shall have an appeal of the death of his Ancestor, where the party by whom he conveyeth his relcent could not by possibility. 25 b †.

Within what time it ought to be brought. 254 b ¶.

Where in an appeal the parties ought to maintain the combat in proper person, otherwise in a writ of right. 294 b ¶.

Where the Defendant in an appeal shall recover wages, and where not. vide tit. Abettors.

¶ Appendant Parcel, & Incident.

Appendant what? and why so called? 121 b*.

The difference between Appendants, and Appurtenants. 121 b*.

What things may be appendant to other, and what not. 49 a* 121 b ¶ 122 a †.

Where an advowson at one turn may be appendant, and at another in gros. 122 a*.

Where a remitter to the principal shall be a remitter to the appendant, notwithstanding severance by the discontinuer 349 b* 363 b*.

Where a remitter shall not be to a thing appendant before recontinuance of the principal. 349 b*.

Where a thing become totally disappendant may be appendant again by a grant in as ample manner. 121 b ¶.

What properly said to be an incident. 251 b †.

The several sorts of incidents. 93 a †.

What services incident to other. 69 a † vide tit. Fealty & tit. Homage.

Rent and services incident to the reversion, and shall pass by grant of the reversion, but not è converso. 151 b 152 a 317 a* 324 a ¶ b ¶.

Distrels incident to every service vide tit Distress.

Incidents to the blood not forfeitable, or transferable over. 99 a ¶.

To what tenure acquital incident, and to what not. vide tit Aquital.

Where by the grant of a messuage the garden, Orchard and Curtelage shall pass as appendant. 5 b*.

What things may be parcel or appendant to a Manor and shall pass by grant of the Manor, and what not. vide tit. Manor.

Where upon a Lease of a Manor except parcel, the part excepted shall continue parcel of the Manor, and where not. vide ibid.

Where a thing appendant, &c. shall pass by a grant (cum pertinentijs) and where without such clause, and where not without special mention. vide tit. Grants, & Prærogative.

¶ Apportionment.

Apportionment what? & whence derived 147 b ¶.

Where part of the land out of which, &c. coming to hands of a Grantee of a rent charge, the rent shall be apportioned, and where not. 147 b ¶ 149 b* ¶ 150 a †.

Where a rent charge may be apportioned by the act of the party, and where not. 148 a † 149 b ¶ 150 a †*.

Where by the eviction of part of the Land the rent issuing thereout shall be apportioned, and where not 148 b* ¶.

Where by purchase or surrender of part of the land, or alienation of part of the reversion a rent service shall be apportioned. 148 a ¶.

Where a rent charge shall be apportioned, albeit the Grantee claimeth part of the land out of which, &c. under the Grantor, and where not. 148 b ¶.

Where a condition may be apportioned, and where not. 215 a ¶.

Where notwithstanding a discent of part of the land to a Commoner the entire common shall remain, and where it shall be apportioned. 149 a †.

By purchase of part of the tenancy by the Lord, what services shall be apportioned, and what not. 149 a ¶ b † vide tit. Extinguishment.

Where damages shall be apportioned, and several upon a recovery. vide tit. Damages.

Where a warranty shall be apportioned, and determine in part, and stand good for other part, and where not. vide tit. Warranty.

Where a power to revoke uses may be apportioned, and revocation made at several times. vide tit. Revocation.

¶ Appropriation.

Where the appropriation of a Church to a house of religion shall be mortmaine. 304 a ¶.

¶ Arms and Armory.

The course of discent of Arms, and how it differeth from other inheritances. 27 a* 140 b †.

The Arms of England and France when first united. 7 a*.

When the Kings of England began first to seal their Charters with a seal of Arms. 7 a.

¶ Ar-

The Table.

¶ Argument.

The ſeveral ſorts of Arguments, and what ſhall be ſaid a good argument or proof in Law, 11 a* ¶. b†*.

¶ Array.

The ſignification and derivation of the word, 156 a†.

What ſhall be ſaid a ſufficient challenge to the array, and what not, Vide tit. Challenge.

¶ Arraignment.

The ſignification and derivation of the word, 262 b¶.

To arraign an Aſſiſe what? ibidem.

The arraignment of a priſoner what? 263 a†.

¶ Arrerages.

Where an acquittance for rent due the laſt day ſhall be a diſcharge of all the arrerages incurred before, 373 a¶.

Where the acceptance of ſervices by the hands of ỹ feoffee of the tenant ſhall bar the Lord of his arrerages incurred before, and where not, vide tit. Acceptance & Avowry.

Where in a writ of annuity the annuity determineth hanging the writ, the arrerages are become irrecoverable, Vide tit. Annuity.

Notice to the Lord to change his avowry not ſufficient without tender of the arrerages, Vid. tit. Avowry.

Where the husband ſurviving ſhall have the arrerages of rents incurred before the coverture, as well as after, Vide ſtat. 32 H. 8 cap. 37.

¶ Aſſets.

What ſhall be ſaid aſſets in the hands of an executor or adminiſtrator, and what not, 113 a* 117 a* 124 a¶ 236 a¶.

What ſhall be ſaid ſufficient aſſets to make a lineal warranty a bar to an eſtate tail and what not, 374 b*.

Where a rent extinct ſhall be ſaid aſſets, 374 b*.

Where an advowſon ſhall be aſſets, & how valued, ib.

A Seigniory of Homage or Fealty, or in Fretalmoigne no aſſets, 374 b*.

¶ Aſſignment.

The derivation of the word, 8 b ¶.

The ſeveral ſorts of aſſignes, ibidem.

Where an executor ſhall be reputed in law an aſſignee, and where not, vide tit. Executor.

Where an aſſignee ſhall take advantage of a condition, and where not, 214 b†* 215 a† b¶ Vid. Stat. 32 H. 8 cap. 34.

Where an aſſignee ſhall take advantage of a covenant real without being named in the deed, otherwiſe of a warranty, 384 b¶ 385 a† Vide tit. Warranty.

Where an aſſignee ſhall have a writ of annuity, and where not, vide tit. Annuity.

Where an action of waſt lyeth againſt the aſſignee for waſte done before the aſſignment, and where not, Vide tit. Waſt.

Who ſhall take advantage of a warranty indeed as aſſignee, and who not, Vide tit. Warranty.

Where an aſſignee ſhall take advantage of a warranty in Law, and where not, vide ibidem.

What ſhall be ſaid a good aſſignment of Dower, and by whom, and what not, Vide tit. Dower.

¶ Aſſiſe.

The derivation and proper ſignification of the word, 153 b¶.

The ſeveral acceptions in Law of the word Aſſiſe ibidem, 154 a* b¶ 155 a b 159 b†.

The ſeveral ſorts of writs of aſſiſe, and why ſo called, 155 a† 159 a¶ b†.

Aſſiſe of novel diſſeiſin and whence ſo called, 153 b¶.

Where an Aſſiſe in confinio comitatus lay at the Common Law, and where at this day, 194 a† vide ſtat. 2 R. 2 cap. 10.

What ſhall be ſaid a good plea in bar of an Aſſiſe, and what not, 228 b 229 a† 285 a¶ b*.

Where the Conuſee of a reverſion by fine upon a Leaſe for years being diſſeiſed ſhall have an Aſſiſe before Attornment, 320 a* Vide tit. Attornment.

Vide tit. Diſſeiſin.

¶ Attainder.

The ſeveral ſorts of attainders, 390 b*.

The ſeveral writs of Eſcheat upon attainders, 390 b¶.

Where a man may be attainted after his death, 390 b¶.

By aſſent of the crown upon a perſon attainted, the attainder, eo inſtante void, 16 a†.

The difference between a perſon attainted and convicted, 390 b¶ 391 a†.

What a felon forfeits by conviction before attainder, 391 a†.

Judgment to peine fort & dure upon refuſal to anſwer according to law, or ſaying nothing, no attainder, 391 a* vide tit. Treaſon.

Where the def. in an appeal waging battel is ſlain he ſhall have judgment to be hanged, 390 b¶.

Where attainder in the Admirals Court for Pyracy, murder, &c. upon the ſea, ſhall work no corruption of bloud or forfeiture of lands, otherwiſe of an attainder before commiſſioners by the ſtatute 28 H. 8 vide ſtat. 28 H. 8 cap. 15.

Attainder of gereſle, or in a Præmunire no corruption of bloud, 391 a¶.

In what manner and degree the bloud is ſaid to be corrupted by attainder, 391 b†.

Where a perſon attainted hath iſſue, and after pardon hath iſſue, the youngeſt is not inheritable during the life of the eldeſt or his iſſues, 8 a* 392 a*.

Where the ſons of a perſon attainted born before the attainder ſhall inherit each to other, ſeem of ſons born after the attainder, 8 a*.

Vide tit. Felony.

¶ Attaint.

The derivation of the word, 294 b*.

Where ſuch writ lyeth, ibidem.

The judgment in an Attaint, 294 b*.

No ſuperſedeas grantable upon an attaint, 227 b†.

No Conuſans grantable in an attaint, vide tit. Conuſans.

A releaſe of all actions a good bar in an attaint, 289 a† vide tit. Releaſes.

No attaint lyeth upon a verdict in waſt, Quale jus or other enquiſt of office, 355 b*.

Where it lyeth upon a verdict in an Aſſiſe, 255 b*.

Where an attaint lyeth upon a verdict where the witneſſes are ſworn to the enqueſt for tryal of the deed, and where not, 6 b*.

Vide Stat. 23 H 8 cap. 3. Of attaints, and between what parties maintainable, and what ſhall be ſaid a good plea in an attaint, and what not.

The Table.

¶ Atturnment.

The definition of an Atturnment, 309 a †.
The diuision of Atturnments, 309 a *.
Atturnment why requisite, ibidem.
What act or words shall amount to an Atturnment, 310 a *.
Where it ought to be in the life of the parties, and where it shall be good to the heir, 309 a ¶ b † 315 a ¶.
In what conueyances requisite upon passing a reuersion, &c. at this day, and in what not, 309 b † 314 b * 321 b * ¶.
Where a grant to, or by the King shall be good without atturnment and where not, vide tit. Prerogatiue.
Payment by the tenant to the baily of the grantee who formerly receiued the rents, no atturnment without notice, vide tit. Notice.
Where the Meine grant ouer his meinalty and the lord paramount release to the tenant, atturnment by the tenant after shall be sufficient to pass the rent seck by surpluſage, 309 b ¶.
Where after a grant of the reuersion of two acres the lessor leuy a fine of one, an atturnment after to the grant shall pass the other acre, 309 b ¶.
Where an Atturnment for part of the grant shall be good for the whole, 309 b ¶ 314 a ¶ b *.
Where an Atturnment to one Joyntenant shall be good to both, and one dying an Atturnment to the suruiuor good, 310 a †
Atturnment to him in the remainder after the death of grantee for life void, 310 a †.
Where an assent in the absence of the grantee shall be a sufficient Atturnment, 310 a *.
Where two grants are made of the same thing, an Atturnment to the second shall be a frustration of the first, 310 a ¶.
Where the enlargement or alteration of the particular estate after grant of the reuersion shall be a countermand of the Atturnment, 310 a ¶.
Where a feme grant a reuersion, the taking of a husband shall be a countermand of the Atturnment, 310 b †.
To what purposes an Atturnment shall have relation to the first grant, and to what not, 310 b * vide tit. Alien.
Where a reuersion is granted to a man and a feme, by an Atturnment to them after marriage they haue no moities, 310 a †.
Where the entermarriage of a feme grantor with the grantee shall be a good Atturnment in law, 310 a †.
Where an Atturnment to Cestuy que use shall vest the reuersion in the grantee, 310 a †.
Where an Atturnment to the grantee for life of a reuersion shall be good to all in the remainder, 310 a *.
Where a reuersion is granted for life, and after to the same grantee for years, an Atturnment to both grants void, 310 b †.
Where a seigniory is granted to a Bishop and his heires, and after to him and his successors, Atturnment to both grants void, 310 b †.
Where a reuersion is granted of B. acre, or white acre, an Atturnment to the grant shall vest the estate in the grantee upon his election, 310 b †.
Where upon the feoffment of a mano, nothing of the services pass until Atturnment of the free tenants, 313 b * ¶.
Where in pleading such a feoffment the Atturnment of the tenants need not be alledged, 310 b ¶ vide tit. Pleading.
Where the tenants attorn to a lease for years of the mano, the Atturnment after of the lessee shall be sufficient to pass the reuersion, 311 a †.
Where to the grant of a seigniory, &c. the Atturnment only of the immediate tenant in privity requisite, 311 a * ¶ b † 312 a † * b † 313 b ¶.
Where to the grant of a rent-charge or seeke the Atturnment only of the tenant of the freehold requisite. 311 b per tot. pas.
Where such rent is granted for life, and the tenant Attorn, the Atturnment after of the grantee shall be sufficient to pass the reuersion, 311 b ¶ vid tit. Quid juris clamat.
Where upon grant of such rent issuing out of a reuersion, the Atturnment only of him in the reuersion requisite, 311 b ¶.
Where and to what kind of Inheritances granted, Atturnment is requisite, and where, and to what not, 312 a *.
Where an Atturnment to the grantee for life of a seigniory shall be good to him in the remainder to distrain, and where not, 312 b † 320 b ¶.
Where the acceptance of a grant of the seigniory by the baron seised of the tenancy in the right of his wife shall be a good Atturnment to bind the wife after couertu-e, 312 b ¶.
Where a seigniory is granted to the tenant and a stranger, the acceptance of the tenant shall be a sufficient Atturnment to extinct his moity and vest the other in the grantee, 313 a †.
Where the acceptance of a grant of the seigniory to the wife by the husband being tenant shall be a good Atturnment. 313 a *.
Where the acceptance of a grant of the seigniory by a lessee for life of the tenancy shall be a good Atturnment to vest the seigniory in himself, 313 a ¶ b †.
Where in a scire facias upon a fine iudgment to recouer part of the services shall be a good Atturnment in law for the whole, 314 a * 319 a ¶.
Atturnment by one Joyntenant good for all, 314 a * 319 a ¶.
Where an infant shall be compelled to Attorn, vide tit. Infant.
Where a man deaf and dumb may Attorn, secus of a non compos mentis. 315 a ¶.
Where upon grant of a reuersion tenant by statute merchant, &c. or executors hauing till the debts be paid shall be compelled to Attorn, 315 b ¶.
Where tenants in dower, or by the Curtesie after assignment of their estates shall Attorn, and where the Atturnment of the assignee shall be sufficient, 316 a † *.
Where the Atturnment of an assignee of the particular estate upon condition shall be sufficient to pass the reuersion, 316 a *.
Where an Atturnment by tenant in tail shall be good, and where he shall be compelled to Attorn, and where not 316 a ¶ b †.
Where the Atturnment of lessee for years or him in the remainder for life expectant shall be sufficient to pass the reuersion in fee, 316 b ¶ 317 a †.
Where the acceptance of lessee for life of a confirmation of his estate, the remainder ouer shall be a good Atturnment to vest the remainder, 317 a ¶.
Where by the release of one Joyntenant to his companion, he shall distrain for the whole, and haue an action of Ward against the lessee without Atturnment, 318 a †.
Where the particular tenant shall be compelled to Attorn in a Quid juris clamat upon grant of the reuersion, and where not, vide tit. Quid juris clamat.
Where the re-entry of the lessee upon the feoffee of his lessor shall be a good Atturnment to settle the

The Table.

the reuerſion in the feoffee, 318 b *¶.

¶Where the recouery in an Aſſiſe by the leſſee for life againſt ſuch feoffee ſhall be a Attornment, quere. 319 a †.

¶Where a reuerſion is granted for life vpon a leaſe for life, and the leſſee Attorn, and the leſſor miſſeiſe the leſſee and make a feoffment, the regreſſe of the leſſee ſhall be no Attornment of the grantee for life, 310 a ¶.

¶Where a ſtignior, or reuerſion is granted by fine what aduantages the conuſee may take before Attornment, and what not, 319 b ¶ 320 a ¶ b per tot. pag.

¶Where by a generall Attornment without any ſaying the tenant for life ſhall loſe his priuiledges, and where not, 320 a * b vide tit. Quid juris clamat & Per quæ ſeruitia.

¶There one that claimeth vnder a conuſee by fine may diſtrain or maintain any action, albeit no Attornment made to the Conuſee or him that hath his eſtate, and where not, 309 b * 321 a ¶ b per tot. pag.

¶Where the deuiſee of a reuerſion may diſtrain or haue any action without attornment, 322 a b †.

Where an attornment vpon condition ſhall be good, and where not, 274 b † vide tit. Condition.

¶ Atturney.

THe ſignification of the word, 51 b ¶.
The ſeuerall kinds of Atturneys, ibid.

What perſons may be Atturneys in the Kings court, and what not, 128 a *.

The difference between an Atturney and a Reſpondents in ancient times, 128 a *.

Where an Idiot or lunatick ought to ſue in perſon, and not by atturney, 135 b ¶.

Where liuery of ſeiſin by an atturney ſhall be good, and what warrant ſhall be ſufficient, and well purſued, and what not, vide tit. Liuery.

Where in an action by an Atturney for rent, the Defendant ſhall not wage his Law, vide tit. Wager of Law.

¶ Audita Querela.

WHere for matter of diſcharge happening ſince the Iudgment, the party ſhall haue an Audita querela before Execution, 290 b * Vide tit. Execution.

A releaſe of all actions perſonals a good bar in an Audita querela, 289 a † vide tit. Releaſe.

¶ Averment.

AVerment what, 362 b *.
The ſeuerall kinds of averments, 362 b *¶.

What pleas ought to be averred, and what not. ib. 303 a ¶.

Where in a Præcipe the tenant plead non tenure, or diſclaim, the demandant notwithſtanding may aver him tenant, and where not 362 b † 363 a ¶.

Where a feoffment in pleading may ſuppoſe a feoffment to be Cauſa matrimonii prælocuti without ſhewing a deed, vide tit. Cauſa matrimonii, &c.
Vide tit. Pleadings.

¶ Anceſter.

THe derivation of the word, and how it differeth from predeceſſor, 78 b *.

¶ Avowry.

THe ſeuerall forms and kinds of Avowries for rents and ſeruices, 296 a ¶ b †.

Where the lord ſhall be compellable to avow vpon the feoffee or grantee of his tenant, and where not, 269 b † ¶ 311 a *.

Notice to the lord to chaunge his avowry not ſufficient without tender of the arrerages, 269 b ¶.

Where the lord by his avowry vpon the feoffee of his tenant, ſhall loſe the arrerages incurred in the time of the feoffee, and where not, 269 b * vide tit. Acceptance.

Where the tenant being diſſeiſed ſhall compel the lord to avow vpon him, and where not, 268 a ¶ b ¶.

Where the avowry of the donor vpon his donee in tail ſhall be good notwithſtanding a diſcontinuance, 77 a † 269 a †.

Where the donor in tail, having but one reuerſion, ſhall make two ſeuerall avowries vpon his donee, 22 a *.

Where the lord at this day may avow vpon the lands and tenements holden without naming any perſon in certain, 269 b † ¶ vide Stat. 21 H. 8. ca. 19 and what alteration of the Common Law is introduced by that Stat.

¶Where vpon an avowry at this day aid is grantable of a ſtranger, vide tit. Aide.

Where the executors may avow for the arrerages of rent incurred in the life of teſtator, vide Stat. 32. H. 8. cap. 37.

¶ Authority.

WHere the performance of the ſubſtance ſhall be a good purſuit of an authority, and where it ought to be ſtrictly purſued, 49 b † 52 a * b † 303 b †.

Where by the execution of the authority of another concerning lands, a man ſhall preiudice his own intereſt, and where not, 52 a ¶.

Where a man may do leſs then his authority warrants, and where not, 52 a ¶ b † 258 a ¶ 259 a †.

Where the death of the party ſhall be a countermand of his licence and authority, and where not, 52 b *¶.

Where an authority ſhall ſurvive, and where not, 181 b †.

Where an authority is given to three or four ioyntly or ſeuerally, the act done by two ſhall be good, and where not, 185 b *.

¶Where a man doing more then his authority warrants, it ſhall be void for all, and where good for that which is warranted, and void for the reſt, 258 a *.

Where an authority or power may be apportioned, vide tit. Apportionment.

¶ Aumone quid, 97 a †.

¶ Ayel.

WHere ſuch writ lyeth, 160 a *.

¶ Bailment.

WHere the Bailee ſhall ſatisfie for the goods ſtoln, or otherwiſe miſcarryed, and where not, 89 a ¶.

The Table.

¶ Bailiff.

The ſignification and derivation of the word, 61 b * 168 b † * vide Stat. Magnæ Charta cap. 28.
The office and duty of a Bailiff, 62 a † 168 b †.
Where and for what things a Bayliff chargeable in an accompt, 172 a * vide tit. Accompt.
Where a Gardian in Socage occupying after the heir accompliſh the age of 14. ſhall be charged in an accompt as Bayliff, vide tit. Socage.
Where one Joyntenant or Tenant in Common ſhall have an accompt againſt his Companion as Bayliff, vide tit. Accompt.

¶ Bank.

The ſignification of the word, 71 a †.
The antiquity of the Court of common Bank, ibid.
The ſtile of the Courts of Kings-bench, and Common-pleas, 71 b †.

¶ Bargain and Sale.

What eſtate the Bargainor ſhall be ſaid to have in him before inrolment, 147 b *.
To what purpoſes a bargain and ſale after inrolment ſhall relate to the firſt delivery, and to what not, 147 b * 186 a *.
Where the bargainee of a Seigniory or rever. ſhall diſtrain or have an action of waſt before attornment, 309 b † 321 b ¶.
Where the reſervation of a rent upon a bargain and ſale ſhall be good, vide tit. Reſervation.

¶ Barretor.

The derivation of the word, 168 b †.
The deſcription of a Barretor, 168 a ¶.
Where a warranty upon a feoffement to barretors, whereby the tenant waves the poſſeſſion ſhall be ſaid to commence by diſſeiſin, vide tit. Warranty.

¶ Baron and Feme.

To what purpoſes Baron and feme are ſaid to be one perſon in law, 112 a ¶ 187 b †.
What things of the wife are given to the husband by the marriage, and what not, 351 a per tot. pag. & b †.
Where the husband ſhall have the chattels reals of his wife, and where not, 46 b * 185 b * 299 b ¶ 300 a † 351 a * ¶.
What act of the husband ſhall be a diſpoſition or alteration of the term of his wife, and what not, 46 b * 351 a *.
Where upon an execution againſt the husband, the Sheriff ſhall ſell the term of the wife, 351 a *.
Where the charge of the husband upon the chattel of the wife ſhall not binde the wife ſurviving, ibid.
Where the husband ſurviving ſhall have the chattels of his wife conſiſting in action, and where not, 351 a ¶ b †.
Where the husband ſurviving ſhall have the arrerages of the rents of his wife incurred before coverture as well as after, vide Stat. 32 H. 8 cap. 37.
Where a Leaſe by husband and wife ſhall binde the wife and her heirs, and where not, 44 a ¶.
By what mean the husband in his life may paſs an eſtate in lands to the wife, and by what not, 112 a *.
Where a ſale of lands by the wife to the husband ſhall be good, and where not, 112 a ¶ 187 b ¶.
Where a protection cast for the husband ſhall be good alſo for the wife, 130 b †.
Where husband and wife ſhall be Joyntenants, and where by entierties, and where by moities, vide tit. Joyntenants.
Where the husband and wife ſhall wage their law for the debt of the wife before coverture, vide tit. Wager of law.
Where the husband may be an Atturney to deliver ſeiſin to his wife, 52 a * 187 b ¶.
Where the grant of acquital to the husband and his heir ſhall extend to the wife after his death, 241 a *.
Where the laches of the husband ſhall prejudice his wife, and where not, 240 a ¶ b † *.
Where by attainder of the wife the Lord by eſcheat ſhall oust the husband before iſſue, 351 a *.
What eſtate the King gaineth by attainder of the husband during coverture, ibidem.
Where the wife ſhall be puniſhed for waſt done in the life of her husband, de è conv rio vide tit. Waſt.
Where the wife being remitted during coverture, may after the death of the husband wave her remitter, and where not, vide tit. Remitter.
Where the wife ſhall be received upon default of her husband, vide tit. Reſceit.
Where the wife ſhall be examined upon a fine levyed, and where not, vide tit. Fines.
Where a partition made by the husband and wife, or by the husband only ſhall binde the wife, and where not, vide tit. Partition.
Where a demiſe by the husband to his wife ſhall be good, but not è contrà, 112 a * b †.
Vide tit. Coverture.

¶ Baron and Barony.

How Barons anciently were created, and how at this day 9 b * 16 b † *
The firſt creation of a Baron by patent, 9 b *.
The eſtate and livelihood of a Baron, 69 a * ¶ 83 b †.
The relief of a Baron 69 b † 83 b †.
Where a man called by writ dyeth before he ſits in Parliament, no Baron, 16 b †.
The form of ſuch writ, ibid.
Iſſue of Baron, &c. of no Baron how triable, 16 b *
What Monaſteries and Biſhopricks in England were and are held by Barony, 79 a * vide tit. Biſhop.
Where a Baron and Peer of the Realm ſhall be exempt from Juries, vide tit. Challenge.
Where a Barony, &c. may be entailed, 10 a * vid. tit. Tail Vide tit. Nobility.

¶ Bar vide tit. Pleadings.

The ſignification of the word, 37 a *.

¶ Baſtardy.

The Etymology of the word (Baſtard) 243 b ¶ 244 a †.
The ſeveral kinds of Baſtards, 244 a †.
Baſtard of what eſteem in law, 3 b †.
By what name he may purchaſe Lands, and by what not, 3 b †.
Baſtard no child within the Stat. of 32 and 34 H. 8. of Wills, 78 a ¶ 123 b †.
No conſideration to raiſe an uſe, 123 a ¶.
A Baſtard brother, &c. no principal challenge, 157 a *.
Iſſue born after 9 months or 40 weeks of the husbands decease, a Baſtard, 123 b †.

The Table.

Where the iſſue born within marriage ſhall be reputed a Baſtard, and where not, 244 a*.
In what law, and to what purpoſes a Baſtard eigne is eſteemed a mulier, 245 a†.
Where the dying ſeiſed of the Baſtard eigne without interruption ſhall bar the right of the mulier, 243 b ¶ 244 a † b*.
Where ſuch dying ſeiſed without a deſcent ſhall be no bar, 244 a*.
What ſeiſin by the baſtard during his life ſhall be ſufficient to bar the mulier, and what not, 15 a ¶.
Where a partition by the Baſtard and mulier ſhall bind the mulier and her heirs, vide tit. Partition.
Where an entry by the Baſtard and a deſcent after the death of the mulier his wife being priviement enſeint ſhall bar the ſon born after, 244 a*.
Where the baſtard die his wife enſeint the entry of the mulier ſhall bar the iſſue born after, 244 a*.
Where the deſcent to the iſſue of the Baſtard before entry ſhall bar the mulier, 244 a*.
Where ſuch dying ſeiſed of the Baſtard ſhall bar an Infant or Femecovert mulier, ibidem.
Where ſuch deſcent of ſervices, rents, reverſions, &c. ſhall bar the mulier, 244 a ¶.
Where ſuch deſcent ſhall bind the mulier notwithſtanding the wife of the Baſtard be endowed, 244 a ¶.
Where ſuch deſcent upon the profeſſion of the baſtard in religion ſhall be a like bar, 244 a ¶ 248 b ¶.
Where the collateral heir ſhall aſwell be bound by ſuch deſcent as the mulier, 244 a ¶.
Where two daughters a Baſtard and mulier, enter gentrally upon the death of the Baſtard her iſſue ſhall inherit a moity, 244 a ¶ 368 a †.
Where a Mordanceſter lyeth not againſt the baſtard, vide tit. Mordanceſter.
Where a Baſtard ſhall have his age, vide tit. Age.
Where the entry and dying ſeiſed of the ſon of the Baſtard ſhall bar the mulier, 244 b †.
The entry of what perſons ſhall avoid the eſtate of the Baſtard, and of what not, 245 a* ¶.
Where the agreement of the mulier to the entry of a ſtranger ſhall be a good claim to avoid the eſtate of the Baſtard, 245 a ¶.
What act ſhall be ſaid an interruption of the poſſeſſion of the Baſtard, and what not, 245 b †*.
Where the baſtard after his entry ſhall be vouched only by reaſon of the warranty of his anceſtor, 376 b*.

Bedel.

The derivation of the word, 334 b*.
The oath and office of a Bedel, ibid.

Benerth

quid: 86 a †.

Berewica,

ſeu Berewit quid: 116 a †.

Berquarium,

ſeu Bercaria quid: 5 b*

Biſhop.

How all the Biſhoppicks in England and Wales are of the Kings foundation and patronage, and held by Barony 97 a* ¶ 134 a* 344 a*.
The number of them, and which are of ancient continuance and which of latter foundation, 94 a*.
How anciently they were donative, and by what means they became Elective, 134 a ¶ 344 a*.
Who may write to the Biſhop to certifie Baſtardy mulierty, &c. and who not, 134 a ¶.
Where and as to what acts the privation, or tranſlation of a Biſhop ſhall amount to a death, and where, and as to what not, 329 a*.
Where the confirmation of a grant of a Parſon by the Biſhop ſole without the Dean and Chapter ſhall be good, and where not, vide tit. Confirmation.
Where a Biſhop ſhall not have aid of the King, vide tit. Aid.
Vide tit. Corporation, & tit. Ordinary.

Bloud.

The ſeveral blouds which a man is ſaid to have in him, 12 a* b* 14 a*.
Who ſhall be ſaid next of bloud as to ſeveral purpoſes, 10 b per tot. pag. 88 b*.
What bloud ſhall be ſaid more worthy then other, and ſhall inherit before other, 12 b per tot. pag. 14 a per tot pag.
Vide tit. Corruption of bloud, Heir, Inheritance.

Bokeland

quid, 8 a ¶ 58 a †.

Bordarii,

ſeu Borduanni qui, 5 b*.

Boſcus

quid, and what paſſeth by ſuch grant, 4 b* ¶.

Bote

quid, 127 a*.

Bovata

terræ quid, 5 a ¶ vide Oxgange.

Briga

quid, 3 b ¶.

Bruera

quid, & unde, and what paſſeth by ſuch grant, 4 b ¶ 5 a †.

Burgage.

The Etymology of the word, 108 b ¶ 109 a ¶.
The deſcription of a tenure in Burgage, 108 b ¶ 109 a †.
Of what perſon ſuch tenure may be, 109 a*.
Vide tit. Knights Service, & Socage.

Burgebote

quid, 109 a † 127 a*.

Burghengliſh,

vide tit. Cuſtom.

Bye,

& Byan quid, 5 b*.

Cambridge

an ancient City, 109 b*.

Capacity.

What perſons are of ability to enfeoffe, and what not, vide tit. Feoffment.
What perſons are of ability to purchaſe, and what not, vide tit. Purchaſe.
Matus, ſurdus & cæcus of what things capable in law, and of what not, 8 a*.
What perſons capable of a Gardianſhip in Socage, and what not, vide tit. Socage.
What perſons capable of an Attornieſhip in the Kings Court, and what not, vide tit. Attorney.
What perſons capable to be of a Jury, and what not, vide tit. Challenge & Juror.
What perſons capable of Offices of State, or which concern the Common-weal, and what not, 107 b per tot. pag. vide tit. Office.
Of what things an Infant or Feme covert capable, Vide Infancy & Coverture.
Of what things a Monk capable, and of what not, 132 b*.
Of what things an alien capable to his own uſe, and of what to the uſe of the King, vide tit. Alien.

The Table.

The capacity of the Queen without the King, vide tit. Queen.

¶ Caſtle.

What things ſhall paſs by the grant of a Caſtle, 5 a *.
What Caſtle may be built by a ſubject, and what not, ibid.
Of what Caſtle a woman ſhall be endowed, and of what not, vide tit. Dower.
What caſtle may be divided in a partition between parceners, and what not, 165 a ¶.
Tenure by caſtle-gard, vide tit. Knights ſervice.
Where ſuch tenure remaineth albeit the caſtle be ruined, 83 a *.

¶ Cauſa Matrimonii prælocuti.

Where a man give land to a woman cauſa, &c. though he marry her, or the woman refuſe ſhe ſhall retain the land for ever, but not è converſo, 204 a *.
Where the feme in pleading may aver ſuch gift to be cauſa Matrimonii, &c. without ſhewing a deed, ibidem, 226 a *.
Collateral warranty no bar in a Cauſa Matrimonii, &c. vide tit. Warranty.

Certificate, vide tit. Tryal.

¶ Certainty.

The ſeveral kinds of certainties, 303 a *.
What certainties required in a Count, Bar, Replit. Etoppel, &c. vide tit. Pleading & Etoppel.
Where there may be a certainty in an uncertainty, 96 a *.

¶ Ceſſavit.

Where it lyeth againſt the heir within age, 380 b ¶ vide tit. Age.
Where the tenant holdeth lands in ſeveral counties by one ſervice no Ceſſavit lyeth, 154 a † vide Stat. W. 2 c. 21.

¶ Challenge.

The ſignification and derivation of the word, 155 b ¶.
The ſeveral ſorts of challenges, 156 a †.
What ſhall be ſaid a principal cauſe of challenge to the array of the pannel, and what not, 156 a † *.
What ſhall be ſaid a ſufficient challenge to the Array for favour, and what not, 156 b ¶.
Where ſuch challenge may be made the King being party, and where not, 156 a ¶.
Where the party notwithſtanding his challenge to the Array found againſt him ſhall have his challenge to the polles, 156 b †.
Challenge to the polles what, and the ſeveral kinds of ſuch challenges, 156 a †.
Challenge peremptory what: where admitted, and what number the party might challenge at the Common Law, and what at this day, 156 b † *.
The ſeveral ſorts of principal challenges to the polles, 156, b *.
Where a Peer of the Realm ought to be challenged, and if neither party will challenge him he may challenge himſelf, 156 b ¶.
What ſhall be ſaid a good challenge for want of freehold, and what not, 156 b ¶ 157 a † vide Stat. H. 5 cap. 3 27 Eliz. cap. 6 vide tit. Juror.
Where an alien or villain may be challenged, 156 b ¶.
What perſon may be challenged for an inſufficient Hundred or, and what not, 157 a †.
What ſhall be ſaid a principal challenge to the polles by cauſe of affection, and what not, 157 a * ¶ b per tot. pag.
Where the Plaintiff may allege a principal cauſe of challenge to the array, and pray proceſs to the coroners, and where he ought to have a Venire facias to the Sheriff, 157 b *
Where in Outlawry of treaſon iſſue is joyned upon a collateral point, yet the party may have ſuch challenges as if he had been arraigned upon the crime it ſelf, 157 b ¶.
What crime in a Juror ſhall be a principal cauſe of challenge, and what not, 6 a † * 158 a † vide Stat. W. 2 cap. 38 Artic. ſuper Chart. cap. 9 vide tit. Juror.
At what time each challenge ought to be taken, and where the party muſt ſhew the cauſe of his challenge preſently, and where not, 158 a † * b †.
How and by whom challenges ſhall be tryed, and to whom Procels ſhall be awarded, 158 a * ¶ b †.
Where a witneſs may be challenged, and where not, 6 b †.
Where a man may be challenged to be a Juror, they cannot be challenged to be a witneſs, & è converſo, 6 b †.
Where a Nobleman being arraigned cannot challenge his Peers, 156 b * 204 a ¶.
Where the 4 Knights Electors of the grand Aſſiſe ought not to be challenged, 294 a ¶.
Where and at what time the Jurors in a writ of right may be challenged, and where, and at what not, 294 a ¶ Vide tit. juror. Tryal. & Verdict.

¶ Champerty, vide tit. Maintenance.

The ſignification and derivation of the word, 368 b ¶.

¶ Charge and Diſcharge.

Where an eſtate in abeiance may be charged, and where not, vide tit. Abeiance.
Where and how a moveable inheritance in lands may be charged, 343 b *.
Where a charge ſhall ſurvive, and where not, 386 b *.
Where the charge of tenant in tail ſhall bind his Iſſues and where not, vide tit. Tail.
Where the eſtate of the wife ſhall be bound by the charge of her huſband, and where not, 184 b * vide tit. Baron & Feme.
Where the charge of one Joyntenant ſhall be good againſt his companion ſurviving, and where not, vide tit. Joyntenants.
Where the acceptance of an eſtate againſt common right ſhall ſubject the party to charges accruing ſince his title, 32 b † 33 a * 173 a ¶.
Where a forfeiture for breach of a condition in law ſhall avoid all mean charges, and where not, vide tit. Condition & Forfeiture.
What charges ſhall be avoided by a Remitter, and what not, vide tit. Remitter.
Where tenant in tail diſcontinue for life, and after grant a rent charge, notwithſtanding the death of the diſcontinuee the charge remain, 349 a †.
What things may be charged with a rent by grant or reſervation, and what not, vide tit. Rent, & Reſervation.
Where a charge by the Patron and Ordinary in time of vacation ſhall bind the ſucceeding Parſon, vide tit. Parſon.
Where the charges of the anceſtor ſhall be good againſt

The Table.

against his heir, and where not, vide tit. Annuity & Heir.

Where the diſſeiſee, &c. ſhall not avoid the charge of the diſſeiſor, &c. againſt his own confirmation, vide tit. Confirmation.

Charters.

Where they paſs as incidents to the land, and where not, 6 a †.

Where a detinue lyeth for Charters, and what ſhall be ſaid a good plea in detinue for Charters, and what not, vide tit. Detinue.

Where retainer of Charters ſhall be a good plea in dower by the Gardian, and where not, vide tit. Dower.

Chaſe, vide Foreſt.

Chattels.

The ſeveral ſorts of Chattels, 118 b *.

Where they ſhall deſcend or go in ſucceſſion, and where not, 9 a † 18 b * 46 b ¶ 185 b ¶ 388 a *.

What Chattels are grantable without deed, and what not, 85 a perrot. pag.

Where a right of Freehold may drown in a Chattel, vide tit Freehold.

In what reſpects tenant by Stat. Marcham, Staple, &c. ſaid to have a freehold, and in what but a Chattel, 42 a * 43 b *.

Where a freehold and a chattel of the ſame land may ſtand in one and the ſame perſon, ſimul & ſemel, and where not, vide tit. Freehold.

What chattels of the wife the husband ſhall have after her death, and what not, vide tit. baron and Feme.

Where a freehold may be limited in a chattel, 147 b †.

Vide tit. Executors and freehold.

Chevage quid? 140 a *.

City.

The deſcription of a City, 109 b †.

For what purpoſes Cities firſt inſtituted, 109 b *.

The number of Cities in England, ibid.

Every City a village but not è contra, 115 b ¶.

Citizens not capable of the performance of an honourable ſervice, 107 b †.

Vide tit. Village.

Claim, vide tit. Continual Claim.

Clergy.

The ſeveral ſorts of Eccleſiaſtical perſons, 93 b ¶.

The ſtate of the Clergy in England at this day, 94 a *.

The ſeveral orders of Friers formerly in this Realm, vide tit. Monke.

How Clergy-men anciently excelled in the Knowledge of the Common law, and the names of divers that had principal offices of Judicature, 304 b †.

Vide tit. Biſhop, & Dean and Chapt.

Coleberti qui? 5 b * 86 a †.

Colluſion, vide tit. Covin.

Combe quid? 5 b ¶.

Commote quid? 5 a *.

Commiſſion.

Where a Commiſſioner to examiner witneſſes may be challenged to be a Juror in the ſame cauſe, and where not, 155 b †.

Common.

Common whence ſo called, 122 a *.

The ſeveral kinds of Commons, 122 a *.

Where by purchaſe of parcel of the land in which, &c. the whole Common ſhall be extinct, and where not, 122 a *.

Where a diſſeiſee cannot take benefit of a common appendant before recontinuance of that to which, &c. ſecus of an advowſon appendant, 122 b † vide tit. Appendants.

Where by deſcent of part of the land in which, &c. to the commoner, the comuon ſhall be apportioned, and where not, vide tit. Apportionment.

Preſcripton to have ſolam Communiam, and to exclude the owner void, ſecus to have ſolam vesturam, or paſturam, 122 a ¶ 165 a †.

Where the Lord claim common appendant to his mannor, the eſcheat of a tenancy no encreaſe of the common, 122 a ¶.

Concluſion, vide Eſtoppel.

Condition.

The diviſion of conditions, 201 a ¶ b † *.

The deſcription of a condition in deed, 201 a *.

What words ſhall make a condition, and what not, 203 a ¶ b 204 a & b.

Where the cauſe of a grant ſhall amount to a condition, and where not, 204 a *.

Where a Proviſo ſhall amount to a condition, where to a limitation, and where to a covenant, 203 b * 237 a *.

What words ſhall amount to a condition in caſe of a leaſe for years, 204 a ¶.

Where by entry for a condition broken, the parties ſhall be in their former eſtates as to all purpoſes, and where not, 30 b * 203 a ¶ 202 a ¶ b † 218 b *.

Where upon a condition of re-entry for not payment of a rent and retainer until ſatisfaction, the profits after entry ſhall be accounted as parcel of the ſatisfaction, and where not, 203 a *.

What eſtate the feoffor gaineth upon ſuch re-entry, 203 a *.

Where notwithſtanding ſuch condition to retain the fooffee upon tender of the rent may ouſt the feoffor. 202 b ¶ 203 a †.

At what place and time a demand of a rent to enter for a condition broken ſhall be ſufficient, and at what not, vide tit. Demand.

Where a condition ſubſequent is againſt law or impoſſible at firſt, or becometh after impoſſible by the Act of God, the eſtate of the feoffee ſhall be abſolute, 206 a b † * 219 a *.

Where the condition of an obligation or recognizance, &c. becometh impoſſible by the Act of God, the obligation, &c. is lyed, 206 a ¶.

Where the condition of a bond being againſt law the bond it ſelf ſhall be void, and where not, 206 b *

The Table.

Where a man shall never take advantage of a condition where the not performance cometh by his own act or default, 206 b † 209 a †.

Where a leafe and releafe shall be a good performance of a condition to make a feoffment, 207 a *.

Where an Affignee of the feoffee himfelf after affignment may tender money in performance of a condition, 207 b * ¶ 208 a †.

When no time is limited for performance of a condition where the party fhall have time during his life, and where it ought to be performed in convenient time, 208 a * ¶ b per tot pag. 219 a †* b †.

Where a condition is to be performed to a ſtranger, a tender and refuſal ſhall give the feoffor or obliged a title of entry or forfeiture, and where not, vide tit. Tender & Refuſal.

Where a condition is broken for not payment of a rent the bringing of an aſſiſe, diſtreſs, or acceptance at a day after ſhall be a good diſpenſation, 211 b * ¶ vide tit. Acceptance.

Where the acceptance of a collateral thing in ſatisfaction ſhall diſpence with the performance of a condition, and where not, vide tit. Acceptance.

Where a condition ſhal be ſaid performed albeit the words be not purſued, and where not, 213 a * 218 a * 219 b * ¶.

What perſons may take advantage of a condition, and what not, 214 a * ¶ b 215 a & b 379 a † vide Stat. 32 H. 8 cap. 34 vide tit. Aſſignee.

Where the heir may take advantage of a condition which his anceſtor could not by poſſibility, 214 b ¶.

Where a condition may be apportioned, and where not, vide tit. Apportionment.

Where a condition which createth an eſtate, ſhall be good without deed 216 a ¶.

Where upon a grant for years conditionally to have fee, the fee ſhall be ſaid to be in the grantee before performance of the condition, and where not, 216 * b 217 a & b 218 a †.

A leaſe to a man and a woman upon condition which of them firſt marry ſhall have fee, and they enter marry, no fee ſhall accrue, 218 a *.

Where a leaſe is made with condition to have fee upon payment of money, the attainder and execution of the Leſſor before the day ſhall hinder the accruer, 218 a *.

Where notwithſtanding the deveſting of the freehold or fee by a condition ſubſequent the former intereſt of the party ſhall remain in him, and where not, 218 b † *.

Where a man may take advantage of a condition without entry or claim, and where not, 218 a * ¶ b † ¶ 216 b * ¶ 237 a * 379 a †.

Where a condition is to make a gift in frank-marriage to one with the couſin of the feoffee, a gift to him for life ſhall be a good performance, 219 b *.

Where a condition is to make a gift in frankalmoign to a lay-man, a gift to him for life ſhall be a good performance, 219 b *.

Where a condition is to make a leaſe for life to a woman without impeachment of waſt, a leaſe to her and her huſband without ſuch clauſe, ſhall be a good performance, 219 b ¶ 220 a †.

Where a condition is to reinfeoffe the feoffor and his heirs, a feoffment to the heir of the feoffor to have to him and his heirs ſhall be no performance, 220 b †.

Where a feoffment is made upon condition of refeoffment; what act by the feoffee ſhall be ſaid a breach of ſuch condition, and what not, 221 a b 222 a b *.

Where the feoffee is once diſabled, no poſſibility after can enable his performance; ſecus of a diſability of the part of the feoffor, 221 b * ¶ 222 a †.

Where a Tenant of the King by licence make a feoffment upon condition of re-feoffment, a feoffment to his heir after his death ſhall be no performance, 222 a ¶ b †.

Where an advowſon is granted upon condition of regrant, a regrant after the Church voids is no performance, 222 b †.

Where the reſtriction of alienation by the condition of a gift or conveyance ſhall be good, and where repugnant, 223 a per tot. pag. b †.

To what intent a condition that reſtraines the donee in tail to alien ſhall be good, and to what not, 223 b * ¶ 224 a † ¶ b † 379 a *.

Where a condition reſtraining an Infant, Baron and feme or an Eccleſiaſtical corporation to alien ſhall be good, and where not, 224 a *.

Where a condition that tenant in tail may alien for the benefit of his iſſues ſhall be good, 224 b †.

Where a condition to enter upon the alienation and death of tenant in tail without iſſue ſhall be a good prevention of a diſcontinuance, 224 b * ¶ 225 a †.

Where a condition conſiſteth of ſeveral parts in the conjunctive, diſjunctive, or both; how it ſhall be conſtrued, and when ſaid to be performed, 225 a † .

Where and by whom a deed of condition being pleaded ought to be ſhewed in court, and where and by whom not, vide tit. Deeds.

How a man may be aided by a condition without a deed, 226 a ¶ b.

The deſcription of a Condition in law, 233 b *.

Where the breach of a condition in law ſhall be a forfeiture of the office or eſtate of an Infant, or feme covert, and where not, vide tit. Coverture and Infancy.

Where an entry or recovery by reaſon of a condition in law ſhall avoid precedent charges, and where not, 233 b ¶ 234 a †.

What words in a laſt Will ſhall make a condition that cannot in a deed, 236 b †.

What things may be done upon condition, and what not, 274 b †.

Where and what aſſent to an act may be upon condition, and what not, 309 b ¶.

Where the heir ſhall enter for a condition broken albeit no right in the land deſcend, 202 a * 336 b *.

Where upon a gift, &c. a condition is reſerved to a ſtranger, the donor himſelf ſhall take advantage of it, and not the ſtranger, 379 a * ¶.

Where a condition may ſtand good for part, and be void for other part, 379 a *.

Where an alienation ſhall extinguiſh a condition or power of revocation, and where not, 265 b † 379 a ¶ b †.

Where a leaſe for life is made with condition to have fee upon alienation of the reverſion, upon alienation by fine there ſhall be no accruer, 378 b *.

Where in a gift in tail a condition upon alienation of the donee, that his eſtate ſhall ceaſe and remain over, ſhall be void, 377 b 378 a b 379 a.

¶ Confirmation.

The Etymology and definition of a Confirmation, 295 b *.

The form of a Confirmation, ibidem.

The ſeveral kinds of Confirmations, 295 b ¶.

What ſhall be ſaid good words of confirmation, and what conveyance ſhal amount to a Confirmation, and what not, 301 b * ¶ 302 a per tot. pag.

Where the ſame words ſhall amount to a grant and a confirmation of one and the ſame thing, 302 a †.

Where

The Table.

Where privity is requisite in a confirmation, and where not, 296 a † 305 b †.

Where a confirmation to the lessee for years of a tenant for life or disseisor shall be good, secus of a Release, 296 a b † 308 a †.

Where a lease is made to begin at a day to come, a confirmation to the lessee before the day shall be void, 296 b †.

Where a confirmation of part of the estate shall be a good confirmation of the whole, and where only for that part, 296 b ¶ 297 a †*.

Where a confirmation to him in the reversion or remainder shall enure to the particular estate in possession, but not, è converso, 297 a ¶ b † 298 a † vide tit. Releases.

Where tenant in tail hath a reversion in fee expectant, a confirmation of the estate tail shall not extend to the reversion, 297 a ¶.

Where two leases for years are in being determinable upon the death of a tenant for life, and he in the reversion confirm the last, and after confirm the first lease, by the death of the tenant for life, the first shall determine, and the last continue, 296 a *.

Where two joyntenants be, one for life, and the other in fee, a confirmation to the joyntenant in fee for his life shall extend to his companion, and the whole fee simple also, 297 b †.

Where one disseisor by the confirmation of his disseisee shall hold out his companion, and where not, 298 a ¶ b †*.

Where a confirmation to tenant for life to have his estate to him and his heirs shall make no enlargement, otherwise where it is to have the land to him, &c 298 b 299 a †.

Where a confirmation to the husband and wife seised in the right of the wife for life, shall enure to the husband in remainder for his life, 299 a ¶ b ¶.

A confirmation to baron and feme, seised for life in right of the feme, to have to them and their heirs, how it shall enure, 299 b †.

A Confirmation to baron and feme tenants for life by several moities to have to them and their heirs, how it shall enure, 299 b †.

A Confirmation to tenant for life and him in the remainder for life to have to them and their heirs, how it shall enure, 299 b *.

Where after a gift to two men and the heirs of their bodies the donor confirm to them and their heirs how it shall enure, 299 b *.

Where a Confirmation to baron and feme possessed of a term for years in right of the feme shall enure to them for their lives in joyntenancy, 300 a †.

Where the re-entry or recovery of the disseisee shall not avoid the charge of the disseisor or his heir against his own confirmation, 300 a *.

Where the feoffor by entry for a condition broken shall not avoid the charge of the feoffee against his own confirmation, 300 a * 301 a ¶.

Where the licence of the Patron and Ordinary to the Parson to grant a rent shall be a good confirmation of the same grant, 300 b *.

Where the confirmation of the grant of a Parson by the Bishop sole without the Dean and Chapter shall be good, and where not, 300 b * 329 a ¶.

Where the grant of a Parson with the confirmation of Patron and Ordinary shall bind the successor during the continuance of the Patrons estate, 300 b * ¶.

Where the grant of a Parson confirmed by another Parson his patron shall bind only during his life without the confirmation of the patron paramount, 300 b *.

Where tenant in tail being patron confirm, and after discontinue the grant shall bind during the discontinuance & if the tail be barred for ever, 300 b ¶

Where a Bishop having two Chapters make a grant, the confirmation of the one without the other shall not bind his successor, 301 a †.

Where a disseisor make a Charter of feoffment, and a letter of attorney to make livery, the confirmation of the disseisee before livery is void; secus of such Charter by a Bishop and confirmation by the Dean and Chapter, or of the grant of a reversion before attornment, 301 a †.

Where a Bishop at the Common Law granted land to the King, the confirmation of the Dean and Chapter before inrolment was good to bind the successor, albeit the confirmation was never inrolled, 301 a †.

Where tenant for life grant a rent in fee the confirmation of him in the reversion shall make the rent good for ever, 301 a *.

Where the lease of tenant for life and him in the reversion shall be said the lease of the tenant and confirmation of him in the reversion and where è converso, 45 a * ¶.

Where the grant of the bargainor and bargainee before inrolment shall be said the grant of the bargainor and confirmation of the bargainee, but è converso after inrolment, 147 b *.

Where the heir of the disseisor and the disseisee joyn in a feoffment it shall be construed the feoffment of the heir and confirmation of the disseisee, but è converso if the disseisor himself and the disseisee had joyned, 302 b † ¶ vide tit. Feoffments.

Where a tenure may be abridged by a confirmation, secus of a Common or rent charge, 305 a * ¶.

Where the reservation of a new tenure upon a confirmation to the tenant shall be void, 305 a ¶ 306 a †.

A confirmation or release by the Lord paramount to the tenant to hold by lesser services void, 305 b †*.

Where the Lord release or confirm to his tenant in Chivalry to hold by Knights service only for all services and demands, yet ward, marriage, &c shall continue, 305 b ¶.

Where a confirmation to an Abbot tenant to hold in Frealmoigne shall be good, 306 a * ¶ b †.

Where a stranger seise and detain a villain, a confirmation to him by the Lord void, 306 b *.

Where a confirmation to the grantee for life of a rent shall be good by way of enlargement, and where not, 308 a * ¶.

Where a confirmation to lesse for life of his estate the remainder over shall be sufficient to pass the remainder, 317 a ¶ vide tit. Attornment.

¶ Constable, vide tit. Marshall.

The several acceptions in Law of the word, 234 b †.

¶ Continual Claim.

The description of a continual claim, and whence so called, 250 a ¶ b †.

Where a continual claim by him that hath right and cannot enter shall avoid a descent, 250 b † *.

Where the heir shall take benefit of a continual claim made by his ancestor to avoid a descent, and where not, 250 b ¶.

Where the continual claim of him in the reversion or remainder shall avoid a descent in the alienee of tenant for life, 251 a †.

Where the claim by him in the remainder for life shall avail him in the remainder in fee as to the avoidance of such descent, and where not, 251 a ¶ b 252 a *.

Where the surviving joyntenant shall take bene-

The Table.

fit of a continual claim made by his companion, 252 a*.

Where and to what purposes a continual claim shall amount to an entry, and seisin and where, and to what not, 253 b per tot. pag. 254 a † 263 a*.

Where such claim out of the view of the land, and where within the view shall be sufficient, and where not, 254 a ¶ b †*.

Where a claim shall amount to an entry to perfect a livery within the view, and where not, vide tit. Livery of seisin.

Within what time a continual claim ought to be made at the Common Law, and within what at this day, 254 b ¶ 255 a 256 a* vide Stat. 32 H. 8 cap. 33

Where such claim at the common Law shall avoid all manner of descents happning within the year and day, 255 b.

Where such year and day to avoid a descent shall not be accounted from the disseisin but from the claim, 256 a †*.

Where the continuance of possession after every such claim shall be a disseisin, for which the party may have trespass or a forcible entry if it be with force, 256 b 257 a.

Where such claim made by the servant of him that right hath upon his commandment shall be sufficient to avoid a descent, and where not, 257 b * ¶ 258 a & b 259 a †.

Where a claim of goods shall amount to a seisure, and where not, 118 b ¶.

Where the bringing of an action shall amount to a claim, 263 a* ¶ 145 b †.

What claim shall hinder a Remitter, and what not, Vide tit. Remitter.

Where the husband discontinue the land of his wife upon condition, by the entry of his heir for the condition broken the state shall vest in the wife without entry or claim, 202 a * 336 b * 337 a †.

Where an agreement to the entry of a stranger in the name of him that right hath within the five years shall be a good claim to avoid a fine, 245 a* 258 a †.

Within what time claim ought to be made after judgment in a writ of Right, or upon a fine levyed at the Common Law, 254 b ¶ 262 a* vide tit. Fines.

Non claim no prejudice to an Infant at the common Law, otherwise to a feme covert, 262 b † vide tit. Fines.

Vide tit. Discontinuance, & Entry Congeable.

¶ Contract.

The derivation of the word, 47 b*.

What shall be said a sufficient contract whereupon to ground an action of debt, and what not, 162 b ¶.

¶ Conusans of Pleas.

Of what matters the Ecclesiastical Court ought to have Conusans, and of what not, 96 a ¶ b †*.

No Conusans grantable in an attaint, vide stat. 23 H. 8 cap. 3.

No Conusans grantable in a Quare impedit, vide tit. Quare impedit.

¶ Cope Quid, 4 b ¶ 5 b ¶.

¶ Copyhold.

The signification of the word Copia, 57 b ¶.

The description of a tenancy by copy, 57 b ¶ 58 a †.

Whence so called, 60 a †.

How Copyholders in antient times were called, 58 a † 61 a* 62 a ¶.

By what things a Copyhold custom ought to be supported, 58 b*.

What things may be granted by Copy, and what not, 58 b † ¶.

By what persons admittances, & voluntary grants by Copy ought to be made, and by what not, 58 b † where a grant by Copy shall be good by one who is not, dominus pro tempore, 58 b*.

By what means Copyhold land or right may be transferred over & by what not, 58 b ¶ 59 a † 61 b* The form of a Copyhold surrender, 59 a*.

Where such a surrender out of the Court of the lord shall be good, and where not, 59 a ¶ 61 b* 62 a †.

What act, &c. by the tenant shall be said a forfeiture of his Copyhold estate, and what not, 59 a* 62 a †

To what purpose the lord shall be said in by the surrender of his copyhold tenant, & to what not 59 b †

Where the interest of the Copyhold estate shall be bound by the surrender, and the admittance of the Lord shall have relation unto it, 59 a † 62 a †.

Where the estate of Cestuy que use shall ensue the limitation in the surrender, and not in the admittance of the Lord, 61 b † 61 b ¶.

Where the Lord shall be compelled to make admittance according to the surrender to him which was dominus pro tempore before, 59 b*.

Where a custom to have fines of copyhold tenants upon the alteration of the Lord or tenant shall be good, and where not, 59 b ¶.

Where fines incertain are unreasonably exacted, the copyholder shall not be compelled to pay them, 59 b ¶ 60 a †.

How Copyholders shall implead and be impleaded, and the form of such plaint, 60 a*.

Where a copyhold may be intailed, and such intail also docked by surrender, 60 b †.

What remedy a copyholder hath against his lord for an electment without cause, 60 b* ¶ 61 a † 62 b ¶ 63 a †.

What remedy a copyhold tenant hath for an erroneous recovery in the Court of his Lord, 60 a*.

The office and duty of the lord of a copyhold manor, 59 b*.

Where admittances by the Lord out of the Court or Manor shall be good, 61 b*.

Where the wife of a copyholder shall be endowed, and where not, 33 b ¶ Vide tit. Dower.

Tenants by the verge, why so called, and how they differ from tenants by copy, 61 a*.

The office and duty of a Steward of a copyhold manor, Vide Steward.

The office and duty of a Bayliff of a copyhold Manor, Vide tit. Bayliff.

The difference between tenants at Will, by custom, and by the common Law, Vide tit. Tenant at Will.

¶ Corody.

Where a house or land may be appendant to a Corody, 49 a* Vide tit. Appendants.

¶ Corporation.

The description of a Corporation, and why so called, 250 a*.

The division of Corporations, 2 a ¶ 250 a*.

How many several ways a Corporation may commence and be established, 250 a*.

What Corporation shall take a fee simple without the word (successors) and what not, 94 b*.

Where a sole Corporation shall take a fee-simple without the word (successors) and where not, 9 b ¶ 94 b ¶.

Where the privileges belonging to a Corporation by prescription shall determine by the change of the

The Table.

the ſame Corporation, and where not, 102 b ¶.
Where by the diſſolution of a Corporation there lands ſhall revert to the donor, and ſhall not eſcheat, 13 b *.
Where and what Corporation may maintain a writ of right, and where, and what not, 341 b per tot. pag.
Where a diſclaimer, or other act by an Abbot, Biſhop, &c. ſhall bind their ſucceſſors, and where not, 103 a *.
The power which Eccleſiaſtical Corporations had to diſpoſe of their lands, &c. at the Common Law, and how they are now reſtrained by ſtatute, 44 a † 300 b ¶ 301 a * 325 b ¶ 342 a †.
What leaſes at this day are good by a Biſhop, Dean and Chapter, &c. and what not, 44 a & b 342 a † Vide tit. Leaſes.
Where and what Corporation may do and receive homage, and where and what not, 65 b ¶ 66 b ¶. 67 a † 341 b † vide tit. Homage.
Where a grant to a Corporation aggregate, albeit the head of the corporation be wanting at the time, ſhall be good, and where not, 264 a †.

¶ Corruption of bloud.

WHere and what Attainder ſhall work a corruption of bloud, and where and what not, vide tit. Attainder.
In what manner and degree the bloud ſaid to be corrupted by Attainder, 391 b †.
By what means the bloud corrupted by attainder may be reſtored, and by what not, 8 a * 391 b * ¶ 392 a †.
Where corruption of bloud in the father ſhall diſable the ſon to inherit to his mother, 12 a ¶.
Where corruption of bloud in the father ſhall diſable the ſon to inherit to his brother, and where not, 8 a *
Where corruption of bloud in the eldeſt ſon ſhall hinder a deſcent to the younger, 13 a ¶ 392 a *.
Judgment to be hanged by Martial law no corruption of bloud, 13 a ¶. Vide tit. Heir.

¶ Couſinage.

WHere and by whom a writ of Couſinage lyeth 160 a ¶.
Where it lyeth for a rent charge or ſeek, ibidem.

¶ Coſts, vide tit Damages.

¶ Cotterelli, & Cottagium quid, 5 b * 56 b †.

¶ Covenant.

WHere an aſſignee ſhall take advantage of a Covenant without being named in the Deed, and where not, 384 b ¶ 385 a *.
Where a man ſhall be bound by the covenants and conditions in an Indenture albeit he never ſealed the deed, and where not, 230 b ¶ 231 a †.
Where a covenant in deed ſhall deſtroy the covenant in law, and where not, 384 a ¶ vide tit. Warranty.
A releaſe of all actions and ſuits no diſcharge of a covenant before it be broken, ſecus of a releaſe of covenants, 292 b *.
Where upon a covenant to pay money at ſeveral days after the firſt default an action of covenant lyeth, otherwiſe of Debt upon an obligation, 292 b ¶ Vide tit. Payment.

¶ Coverture.

THe ſignification of the word, and whence ſo called, 112 a ¶.
Where a feme covert may be a purchaſor, and where the eſtate ſhall be ſaid to be in her before the agreement of her husband, 3 a † 356 b *.
Where laches ſhall be adiudged in a feme covert and where not, 246 b † 352 a † 356 b ¶ vide tit. Infant.
Where a feme covert may ſue and be ſued without her husband, 132 b ¶ 133 a per tot. pag. vide tit. Baniſhment.
Where the breach of a Condition in law ſhall be a forfeiture of the office or eſtate of a feme covert, and where not, 233 b ¶ vide tit. Forfeiture.
To what purpoſes a procurement precedent or agreement ſubſequent ſhall make a feme covert a diſſeiſoreſs, and to what not, 357 b *.
Where the dying ſeiſed of a baſtard without interruption ſhall bar a feme covert, mulier, v. tit Baſtard.
No priviledge of Non-claim to a feme covert at the Common Law, 162 b †.
Vide tit. Baron & Feme.

Covin and Fraud.

THe deſcription and derivation of the word, 257 a ¶ b †.
Where aſſignment of Dower or other lawful act compaſſed by Covin ſhall be avoided, 35 a * 352 b †.
Where Covin in diſſeiſing the diſcontinuee and infeoffing the party that right hath, ſhall hinder a Remitter, and where not, vide tit. Remitter.
Where upon a condition of payment of money, a covinous payment in ſhew ſhall be no performance, 209 b *.
Where and how fraudulent conveyances, executions, &c. ſhall be avoided at this day, and againſt what perſons they ſhall be void, and againſt what not, 9 b ¶ Vide ſtat. 13 Eliz. cap. 15 & 27 Eliz. cap. 4.
Where a Recovery by Covin againſt a tenant for life ſhall be a forfeiture of his eſtate, 362 a † * 356 a ¶, vide ſtat. 14 Eliz. cap. 8 & tit. Forfeiture.
Where a termor for years, gardian, tenant by ſtat. merchant, Elegit, &c. ſhall falſifie a recovery by Covin had againſt him in the reverſion, & where not, 46 a † * vide ſtat. 21 H. 8. cap. 15.
Where the fraudulent conveyance of the tenant to his heir ſhall not prejudice the Lord of his Wardſhip, relief, &c. vide ſtat. Merton, cap. 6 & tit. Wardſhip.
Where a collateral warranty after a diſſeiſin by Covin ſhall be no bar, 366 b ¶ vide tit. Warranty.

¶ Count. Vide tit. Pleadings.

THe Etymology and ſignification of the word, 17 a †.
The office and nature of a Count, 17 a † 303 b ¶.
Where the Count varying from the words of the writ ſhall be good, and where not, 26 b ¶ 34 b † 335 b † 344 a † vide tit. Writs.

¶ Court.

THe definition and derivation of the word, 58 a *.
The divers kinds of inferiour Courts, and the ſeveral Judges of them, ibidem.
Court Baron whence ſo called, and in what place ſuch Court ought to be holden, and in what not, 58 a * ¶.
What Courts are of record, and what not, 117 a ¶ 168 b *.
The Court of Parliament and its juriſdiction. vide tit. Parliament.
The antiquity and juriſdiction of the Courts of Kings Bench and Common Pleas, 71 b † *.
The Admirals Court and its juriſdiction, and according to what law they proceed, vide tit. Admiral.
The Court of the Marſhal and its juriſdiction, and according to what law they proceed, vide tit. Marſhal.
The County Court, Turn of the Sheriff, and Court Leet, 168 a ¶ b *.
The Eccleſiaſtical Court and its juriſdiction, 96 a ¶ b † * 344 a ¶.

The Table.

¶ Cui in vita.

Where such writ lyeth by the wife after the death of the husband upon his alienation and discontinuance, and where not, Vide stat. W. 2 ca. 3.
Where upon a recovery in an action of Waste against the husband and wife by default, the wife shall have a Cui in vita, 355 b*.
Vide tit. Quod ei deforceat, & Receit.

¶ Curtesie of England.

The description of a tenant by the Curtesie of England, and why so called, 29 a † 30 a*.
Of what things the husband shall be tenant by the curtesie, and of what not, 29 a ¶ b † 30 b †*.
Of what estate of the wife the husband shall be tenant by the curtesie, and of what not, 29 b*.
Where the husband shall be tenant by the curtesie of an estate in suspence, and where not, 29 b*.
Of what seisin of the wife the husband shall be tenant by the curtesie, and of what not 29 a † 40 a*.
Where a seisin shall be sufficient to make a tenancy by the curtesie that shall not make a possessio fratris, 15 b †.
Where the husband shall be tenant by the curtesie of a seisin of his wife had by intrusion upon the king, 30 b †.
What time of having issue sufficient to entitle the husband to be tenant by the curtesie, and what not 29 b* 30 a*.
What manner of issue sufficient to entitle him and what not, 29 b ¶.
Where the husband shall be tenant by the curtesie without having issue, 30 a † 111 a †.
Where the husband shall be tenant by the curtesie of an estate of the wife determined, and where not, 30 a †.
What things necessary to a tenancy by the curtesie, 30 a*.
To what purposes the estate of the husband after issue is respected during the life of the wife, 30 a* 67 a †* 124 b †.
Where the husband after the death of the wife cannot waive his estate by the curtesie and claim by devise, 30 a*.
Where the crying of the child is not necessary to entitle the husband by the curtesie, 30 a*.
Where the husband shall be tenant by the curtesie albeit the issue cannot by possibility inherit, and where not, 29 a* 40 a †.
In what cases a man by having issue shall be tenant by the curtesie, where a woman shall not be endowed 30 a ¶ b †*.
Where tenant by the curtesie after assignment of his estate shall be liable to waste, and where not, vide tit. Waste.
Where after assignment he shall attorn to the grant of a reversion, vide tit. Attornment.
Where the warranty of a tenant by the curtesie shall be a bar to the heir, and where not, vide tit. Warranty.
Where a recoinment upon condition shall extinct a title to be tenant by the curtesie notwithstanding an entry for condition broken, 30 b*.

¶ Customs.

The derivation of several acceptions in law of the word (consuetudo) 58 b ¶.
What things necessary to the essence of a custom, 110 b † 113 b ¶.
The difference between a custom and a prescription, 113 b.
In what places a custom may be alleadged, and what customs may be alleaged in upland Towns, and what in Boroughs, 33 b ¶ 110 b*.
Where a custom may be alleaged against an act of Parliament, and where not, vide tit. Prescription, & tit. Devise.
Customs against reason void, 59 b ¶ 62 a* 140 a* 141 a.
Where a custom within a manor to have a fine of every tenant for marrying his daughter without the Lords licence shall be good, and where not, 139 b ¶ 140 a †.
In what Customs a Prescription ought to be alleaged, and in what not, 175 b*.
Where by custom a freehold and inheritance may pass by surrender in the court of the Lord, vide tit. surrender.
Custom that an Abbot or Bishop shall pay relief good, vide tit. Relief.
Custom that the heir of tenant in Dowge shall be in ward to the Lord good, vide tit. Wardship.
Custom of Gavilkind, vide tit. Gavilkind.
Custom of Borough English what, 110 b 140 b*.
Custom that the youngest son shall inherit if he be not of the half bloud, good, 140 b ¶.
Custom that the eldest daughter or Sister only shall inherit, good, 140 b ¶.
Usage, and not usage, a good argument in Law for proof or disproof of any matter, 81 a* b*.
Vide tit. Prescription.

¶ Damages.

The proper signification of the word, 257 a*.
Where upon a joynt action and recovery by Parceners damages shall enure to them in severalty, 198 a ¶.
Where upon a recovery in wast by the Aunt and Neice for wast done in the life of the other Sister, the Aunt only shall recover damages, 198 a ¶.
Where upon a recovery in wast by tenant for life and him in the reversion, he in the reversion only shall recover damages, 42 a*.
Damages not the principal in an action of Wast, vide tit. Wast.
Where damages shall be recovered in a writ of Dower, and where not, vide tit. Dower.
Where in an action of trespass damages shall be recovered for the entry only, and where for all the mean occupation, 287 a †
Where in a writ of Entry upon the stat. of R. 2 damages only shall be recovered for the entry, and not for the mean profits, 257 a*.
What damages and costs the plaintiff shall recover in a writ of forcible entry, vide stat. 8 H. 6 cap. 9.
Damages not recoverable in a Quare impedit at the Common Law, vide tit. Quare impedit.
Where upon a recoinment by a disseisor to divers persons the survivor not agreeing to the recoinment shall be excluded of damages in a writ of entry, 352 b ¶ 360 a vide stat. Glocest. cap. 8.
Where in a Precipe the tenant plead Non tenure, or disclaim, the demandant may aver him tenant to recover his damages, vide tit. Averment.
Where the defendant in an Appeal shall recover damages, and where not, vide tit. Abettors.
Where the plaintiff may release damages and have judgment of the principal, 355 b ¶.

¶ Day.

The legal acception of the word, 134 b*.
The common Days between summons in real actions and the return, 134 b*.
The Days anciently allotted to felons in retain of life to make their defence, and the course of proceeding in the Kings bench upon indictments at this day, 134 b*.

The Table.

¶ What are said dies speciales, and what dies gratiæ, 134 b ¶ 135 a †.
In what cases such days are granted, and in what not, ib.
To what purpose the day of Nisi prius, and the day in bank are said all one, 135 a †.
¶ What are said dies Juridici & dies non Juridici, 135 a *
¶ What dies artificiales, and dies naturales, 155 a ¶.
At what time for crain nations begin to account the day, 135 a ¶.
¶ What shall be said a year, half a year, a quarter of a year, & what a month in legal computation, 135 b †.
¶ Where an action of debt lyeth not for money to be paid at several days untill all the days be incurred, vide tit. Debt & Payment.
¶ Where the common law gave the disseise a year and a day after his claim to enter, the day of his claim shall be taken inclusively, 255 a ¶.
¶ Where in a Protection protecture for one year, the day of the Teste shall be taken inclusively, 130 b *.
An advise to Students in spending the day, 64 b *.
Vide tit. Time.

¶ Dean and Chapter.

The Etymology of the word Dean, 95 a †.
The manner how Deans come in, and are installed at this day, 95 a *.
Chapter, what, and the several sorts of Chapters, 95 a *.
Vide tit. Bishop, Clergy, & Corporation.

¶ Debt.

Where an action of debt lyeth for rent, and where not, 47 a † b * 57 b †.
What shall be said a good plea in debt for rent, 47 b ¶
¶ Where an action of debt lyeth for Relief, Etcuage, &c. and where not, 47 b * 83 a ¶.
¶ What shall be a sufficient contract wherenpon to ground an action of debt, & what not, vid. tit. Contract.
¶ Where upon payment of money at several days an action of debt lyeth not before the last day be past, 47 b * 292 b ¶.
Where an action of debt lyeth by the grantee of a reversion before attornment, and where not, vide tit. Attornment.
¶ Where the Executors shall have an action of debt for the arrearages of rent, which the testator himself could not, 146 b †.
¶ Where the acceptance of a lesser sum shall be a good bar in debt upon an obligation, and where not, vide tit. Acceptance.
¶ Where the acceptance of a collateral thing in satisfaction shall be a good bar in debt upon an obligation, vide ibid.
¶ Where an action of debt lyeth against an Infant upon a contract, & where not, 172 a * vide tit. Infant.
¶ Where by a release of all debts an execution shall be discharged, 76 a † vide tit. Execution.

¶ Deeds.

A Deed what, and what things incident thereto, 35 b ¶ 171 b ¶.
The divers kinds of deeds, 35 b ¶ 36 a † *.
The several parts of a deed, and the nature and office of each part, 6 a * 229 b ¶.
Where a deed shall be good, albeit the formal and orderly parts thereof be wanting, 7 a †.
The difference between a Deed and a Charter, 9 a ¶
What shall be said a good delivery of a deed, and what not, 36 a † 49 b *.
Where a deed shall receive tryal per pais, and where by the Court, 35 b ¶.
Divers rules concerning the constructions of deeds, 36 a *.
The antiquity of sealing Deeds & Charters, 7 a *.
How the dates of deeds were anciently omitted, 6 a ¶
Where every deed ought to be in parchment or paper, 35 b ¶ 171 b ¶ 229 a *.
Where a letter of attorney may be contained within a deed of feoffment, & where not, vide tit. Livery or seisin.
What inheritances shall pass without deed, and what not, 121 b †.
What Chattels shall pass without deed, and what not, vide tit. Chattels.
Where, and why a deed being pleaded ought to be shewed in Court, 35 b ¶ 121 b † 225 a ¶ b †.
What manner of deed is pleadable in Court, and what not, 225 b *.
Where a stranger to a deed may take benefit thereby without shewing the same in Court, and where not, 267 b ¶ 317 b ¶.
Where and by what persons a condition may be pleaded without shewing a deed in court, & where, & by what persons not, 225 a ¶ b † 226 a † * 393 a †
Where the deed of condition ought to be shewed, albeit the condition be executed, and where not, 226 a † 227 b * 228 b †.
Where a deed remaining in one court, may be pleaded in another court without shewing forth, 231 b *
Where a deed shewed in Court shall be said to remain in the custody of the court, and where in the custody of the party, 221 b ¶.
A deed poll what, and whence so called, 229 a ¶.
Where one person may take advantage of a deed poll made to another, and how, 231 a ¶ b † d † * 232 a b †.
The description of an Indenture, and by what names it was called anciently, and by what at this day, 229 a † 143 b *.
Where a deed beginning Hæc Indentura, and without any actual indenting, shall be no Indenture, (scilicet if the parchment or paper be indented, though there be no such words, 143 b † 229 a *.
The several kinds of Indentures, and the forms of them, 229 b 230 a.
Where upon a gift in tail by Indenture, the part of the donee after his death without issue shall belong to the donor, 229 a ¶.
Where an Indenture shall be said the deed of the feoffee, albeit no mention be made of putting his seal to the deed, and where not, 230 b † *.
Where a man shall take and be bound by an Indenture, albeit he never sealed the deed, and where not, 230 b ¶ 231 a † *.
Where an Indenture shall be an Estoppell, and where not, vide tit. Estoppel.
Where a reservation of rent upon egalty of partition shall be good without deed, vide tit. Partition.
Where assignment of Dower shall be good without deed, and where not, vide tit. Dower.
Where an Exchange shall be good without deed, and where not, vide tit. Exchange.
Vide tit. Charter, Defeasance, Habeadum, Inrolment, & Obligation.

¶ Default.

The legal acception of the word, 259 b *.
The several causes allowed by the law for saving a default, 259 b ¶.
Where sickness shall be no cause to save a default, ibidem.
Where a recovery by default against one out of the Realm in the Kings service shall not be avoided by error, vide tit. Recovery.
Where upon a recovery by default in a real action against tenant for life, a Quod ei deforceat lyeth, vide tit. Quod ei deforceat.
Where upon a recovery by default a writ of disceit lyeth, vide tit. Disceit.
Where judgment final shall be given in a writ of right

The Table.

right upon default of the tenant, 295 b †.
Vide tit. Non ſuit & Retraxit.

¶ Defeaſance.

THe derivation of the word, 236 b ¶.
Where and what inheritances may be defeated by Indentures of defeaſance, and where and what not, 236 b ¶ 237 a †.
Where an execution upon a recognizance or ſtatute may be avoided by a defeaſance, vide tit. Execution.
Vide tit. Deeds.

¶ Deforcement.

THe ſignification and derivation of the word, 331 b †.
The difference between a deforcement, deſſeiſin, abatement, &c. vide tit. Abatement.

¶ Degrees.

GRadus unde dicitur, 24 a *.
How the degrees of conſanguinity are computed in the Common, Canon, and Civil Laws, 23 b 24 a † vide tit. Frankmarriage.
The ſeveral ſorts of degrees in a writ of Entry, 233 b ¶.
What eſtate or change ſhall make a degree to have a writ of Entry in the per, and what not, 239 a † * 318 a †.
Where albeit the degrees be once paſt, the writ may be brought within the degrees again, 239 a *
Where two eſtates ſhall make but one degree in a writ of Entry, ibid.

¶ Demand.

THe ſeveral kinds of demands, 291 b †.
The extent of the word, and what ſhall paſs, or be diſcharged by a releaſe of all demands, vide tit. Releaſes.
At what place and time a demand of a rent to enter for a condition broken, or to have an Aſſiſe ought to be made, and at what not, 144 a † 153 a ¶ b † 201 b ¶ 202 a †.
Where a diſtreſs is granted upon not payment and demand, yet the grantee may diſtrain after the day of payment, without any demand, 144 a † 202 a *.
Vide tit. Requeſt.

¶ Demurrer.

DEmurrer what, and whence derived 71 b *.
The form of a demurrer, 71 b ¶.
The ſeveral kinds of demurrers, 72 a *.
What things are admitted by a demurrer, and what not, 72 a †.
Where there is a demurrer for part, and iſſue for other part, which ſhall be firſt tryed, 72 a † 125 b ¶.
The courſe of the proceeding of the Judges upon a demurrer, 72 a †.
Where the party ſhall alledge ſpecial matter, and conclude with a demurrer, 72 a *.
Where a demurrer may be upon Aid prier, receipt, voucher, wager of law, &c. 72 a *.
Where the party ſhall be compelled to joyn in demurrer, and where not, 72 a *.

Dene ſeu Denne, quid 4 b ¶ 5 b ¶.

¶ Denizen.

THe Etymology of the word, 129 a *.
The ſeveral acceptions of the word, 129 a † *.
The difference between naturaliſation, and deniſation by the Kings letters patents, 8 a † 129 a * ¶.
Vide tit. Alien & Ligeance.

¶ Departure.

FOr departure in delyght of the Court, vide tit. Retraxit.
Departure in pleading, what, 304 a †.
Where the Rejoynder containing matter ſubſequent to the bar ſhall be a departure, and where not, 304 a †.
Where the defendant plead performance of Covenants, and the plaintiff reply that he did not ſuch an act, &c. to ſay that he offered to do it, and the plaintiff refuſed, ſhall be a departure, 304 a †.
Where the party entitled himſelf by the common law, to make it good by a cuſtom or act of Parliament ſhall be a departure, 304 a *.
Where the party pleads an eſtate generally in his ſecond plea to maintain it by a matter tanc amount in law ſhall be a departure, 304 a *.
Where the Plaintiff counts of a gift, and maintain it in his replication by a recovery in value, this is no departure, &c.
Where in an action tranſitory the varying of the Plaintiff, in his replication from the time and place alledged in the Count ſhall be no departure, 282 a ¶ b † * v. d. tit. Action.
Vide tit. Pleading.

¶ Deraignment.

THe ſignification and derivation of the word, 136 b *.
Where by deraignment of the anceſtor the warranty deſcended upon the heir ſhall be defeated, vide tit. Warranty.

¶ Detinue.

WHere, and for what things a writ of detinue lyeth, and where, and for what not, 286 b *.
Where the defendant ſhall wage his law in a detinue, and where not, 286 b *.
Where in a detinue of Charters, ſummons, and ſeverance lyeth, ibid.
Where a releaſe of actions perſonals ſhall be a good plea in a detinue of Charters, 286 b *.
Where a Capias lyeth in a detinue, and where not, ibid.

¶ Deviſe.

THe ſignification of the word (deviſe) 111 a †.
Where deviſes ought to have conſtruction according to the intent of the deviſor, and where not, 25 a * 322 b †.
Where an inheritance ſhall paſs by deviſe without the word (heirs) 9 b † 322 a ¶ b *.
A deviſe to a man and his heirs males a good eſtate tail, 27 a ¶.
Where by a deviſe to a man and his heirs males the ſon of his daughter ſhall not inherit, 25 a *.
Where an eſtate may paſs by deviſe, that cannot by act executed in the life of the deviſor, 22 a *.
Where the deviſee ſhall take the thing deviſed without the aſſent of the Executors, and where not, 111 a ¶.
Where upon a deviſe of lands the freehold ſhall be ſaid in the deviſee before entry, 111 a ¶.
What remedy the deviſee hath upon the intruſion of a ſtranger, and a diſcent caſt before his entry, 111 a ¶ vide tit. Entry Congeable.
Where the deviſee of a reverſion ſhall diſtrain, &c. without Attornment, vide tit. Attornment.
Deviſe of lands by cuſtom before the Statutes where good, and where not, 111 a †.
Where by a Cuſtom to deviſe lands, a deviſe of a rent out of the ſame lands ſhall be good, 111 a *.
Where deviſes of lands, &c. ſince the ſtatutes of 32 & 34 H. 8 ſhall be good, and where not, and where ſuch deviſes ſhall be good for the whole, and where but part, 111 b per tot. pag. vid. ſtat. 32 H. 8 cap. 1 & 34 H. 8 cap. 5.
Where the cuſtom to deviſe lands is holden by Knights

The Table.

Knights ſervice, ſhall continue notwithſtanding the making of thoſe ſtatutes, 111 b † 115 a ¶.

Where a deviſe by the husband to the wife ſhall be good, but not e contra, 112 a b †

Where a deviſe of lands to be ſold by executors ſhall be good, and where ſuch ſale by them ſhall be good, and where not, 112 b 113 a 236 a per tot. pag.

What words ſhall amount to a condition in a deviſe that make no condition in a deed, vide tit. Condition.

Where a feoffment being made to the uſe of a laſt will, or of ſuch perſons as ſhall be named in the laſt will, the eſtate ſhall be ſaid to paſs by the will, and where by the feoffment, 271 b ¶ vide tit. Uſes.

Vide tit. Teſtament.

¶ Divorce.

THe derivation of the word, 235 a †.

The ſeveral kinds of divorces, and which diſſolve the marriage à vinculo matrimonii, and which not, ibid.

Where notwithſtanding a divorce the wife ſhall be endowed, and where not, vide tit. Dower.

Vide tit. Baſtardy & Marriage.

¶ Diſability.

THe ſeveral diſabilities in law in the perſon to bring any action, and who were anciently diſabled, and who at this day, 128 a † 135 b *¶.

Where and in what actions alienage ſhall be a good plea in diſability of the perſon of the Plaintiff, and where, and in what not, vide tit. Alien.

Where and in what actions Outlawry ſhall be a good plea in diſability of the perſon, and where, and in what not, vide tit. Outlawry.

Where excommunication ſhall diſable the Plaintiff to bring an action, and where not, vide Excommunication.

Where profeſſion in religion ſhall diſable the plaintiff, and where not, vide tit. Profeſſion.

Vide tit. Capacity.

¶ Diſceit.

WHere upon a recovery by default in an action of waſt a writ of diſceit lyeth, 355 b † vide tit. Quod ei deforceat.

Where upon a recovery by default had againſt a perſon in priſon, a writ of diſceit lyeth not, 259 b *.

¶ Diſcent, vide tit. Heir & Inheritance.

THe ſignification and derivation of the word, 237 a ¶.

Where and what Attainders ſhall hinder the diſcent of lands, &c. and where, and what not, vide tit. Attainder and Corruption of bloud.

Where lands veſted by diſcent ſhall be deveſted by the birth after of an heir more near, vide tit. Heir.

Where the heir ſhall take by purchaſe and not by diſcent, vide ib.

Where the heir ſhall have an Appeal of the death of his Anceſtor, where the party by whom he convey his diſcent could not by poſſibility, vide tit. Appeal.

Where the heir ſhall be in by diſcent of an eſtate that by poſſibility could not be in his Anceſtor, 378 b †.

Where Chattels ſhall diſcend, vide tit. Chattels.

Where and what diſcent ſhall take away the entry of him that right hath, and where, and what not, vide at large in tit. Entry Congeable.

¶ Diſclaimer.

THe Etymology and ſignification of the word, 102 a *.

The ſeveral kinds of diſclaimers, ibid.

Where and what perſons may diſclaim in the Seigniory, and where and what not, 101 b 102 a *.

What is wrought by ſuch diſclaimer in the Seigniory, 102 b *.

Where upon the diſclaimer of the tenant in a real action the demandant may enter before iudgement, 362 a ¶ 363 a ¶.

¶ Diſcontinuance.

THe deſcription of a diſcontinuance, 325 a *.

The derivation and ſeveral acceptions of the word, 325 a * ¶.

How many ſeveral ways a diſcontinuance may be wrought, and to the preiudice of how many ſeveral perſons, 325 a ¶ b †.

What inheritances may be diſcontinued, and what not, 327 b * 331 b ¶ 332 a b † 335 b †

Where the veſting or diſplacing the eſtate of another by alienation ſhall work a diſcontinuance, and where not, 327 b *.

Where the alienation of a Corporation was a diſcontinuance to the ſucceſſors at the common law, and where not, 325 b 341 b ¶ 346 a & b 347 a Vide tit. Corporation how ſuch diſcontinuances are prohibited at this day.

Where and what act by the husband was a diſcontinuance of the lands, &c. of his wife at the common law, and what ſhall be a diſcontinuance at this day, and where, and what not, 326 a per tot. pag. vide Stat. 32 H. 8 cap. 28 & tit. Entry Congeable.

What act or conveyance by tenant in tail ſhall be a diſcontinuance of the eſtate tail, and what not, 326 b † 327 a b † 328 a 334 b *.

Where the diſcontinuance of the wife tenant in tail of the gift, &c. of the husband ſhall be void, Vide ſtat 1 H. 7 cap. 20 and what act by the wife ſhall be ſaid a diſcontinuance, within that ſtat. and what not, vide ibid.

Where the feoffment of the husband being ioyntly ſeiſed in ſpecial tail with his wife, ſhall be a diſcontinuance to the iſſue after the death of the wife, 326 b *.

Where the alienation of one ioyntenant ſhall be no diſcontinuance to his companion ſurviving, 188 a † 327 b ¶.

Where a partition between parceners ſhall work no diſcontinuance, 173 a *.

Where a warranty annexed to a releaſe or confirmation ſhall work a diſcontinuance, and where not, 328 b 329 a 339 a *.

Where the releaſe of an Abbot with warranty ſhall be no diſcontinuance to his ſucceſſor, 329 a *.

Where the grant of a rent in fee with warranty by tenant in tail ſhall be no diſcontinuance to his ſucceſſor, but at his election, 332 b †.

Where tenant in tail of a rent reſerved the tenant, a feoffment by him with warranty ſhall be no diſcontinuance of the rent, ibid.

Where a grant releaſe or confirmation in fee by a leſſee for years by tenant for life or in tail ſhall work no diſcontinuance, 329 b 330 a b † 332 b ¶.

Where the conveyance of an inheritance that lyeth in livery, where no livery is requiſite, ſhall work no diſcontinuance, 332 b †.

Where a fine levyed by tenant in tail of a reverſion upon a Leaſe for years ſhall be a diſcontinuance, ſecus of a reverſion upon a Leaſe for his own life, 323 b *.

The Table.

Where a Leaſe by tenant in tail for the life of the Leſſee was a diſcontinuance at the Common Law during the particular eſtate, 333 a † * 336 a † 338 b † vid. Stat. 32 H. 8 cap. 28 where ſuch Leaſe ſhall be good at this day, and where not

Where the Freehold may be diſcontinued, and not the reverſion, 333 a ¶.

Where a reverſion in fee upon a Leaſe for life, or gift in tail being executed in the life of tenant in tail who made the eſtates ſhall be a diſcontinuance to his iſſue, and where not, 333 a b 334 a 335 b ¶.

Where a gift in tail by tenant in tail, and a releaſe to the Donee in fee ſhall be no diſcontinuance after the death of the Donee without iſſue, ſecus of a leaſe for life and ſuch releaſe, 333 b *.

Where tenant in tail make a gift in tail, a feoffment in fee by the Donee ſhall be no diſcontinuance after his death without iſſue, 317 b ¶.

Where tenant in tail make a feoffment of a Mano with an Advowſon appendant, and dye, his iſſue may preſent before recontinuance, ſecus if the feoffee had preſented in the life of tenant in tail, 333 b *.

Where a fine ſur grant and render by tenant in tail not executed in his life ſhall be no diſcontinuance to his iſſue, 132 b *.

Where a reverſion with warranty not executed in the life of tenant in tail ſhall be no diſcontinuance, ibid.

Where tenant in tail diſſeiſe his leſſee for life and make a feoffment, and the leſſee dye, this ſhall be no diſcontinuance, 333 b ¶.

Where a feoffment by tenant in tail to him in the reverſion or remainder ſhall be a diſcontinuance, and where not, 335 a † ¶.

Where a feoffment by tenant in tail the reverſion or remainder in the King ſhall be no diſcontinuance, 335 a * vide Stat. 34 H. 8 cap. 20.

Where a reverſion may be revefted, and yet the diſcontinuance remain, 335 a ¶.

Where the eſtate which wrought the diſcontinuance is defeated by entry for condition broken, &c. the diſcontinuance it ſelf is avoided, 336 b † *.

Where and by what means an eſtate tail may be diſcontinued by him that was never ſeiſed of the ſame eſtate, and where, and by what not, 338 b ¶ 339 a b 340 a 347 a ¶ b †.

Where the eſcheat of a reverſion in the life of tenant in tail not executed in his Grantee, ſhall work no diſcontinuance to the iſſue, 340 b.

Where the alienation of a Parſon, Prebend, &c. ſhall be no diſcontinuance to the ſucceſſor, 341 a † b *.

Where a condition to enter upon the alienation and death of tenant in tail without iſſue, ſhall prevent a diſcontinuance, vide tit. Condition.

Vide tit. Entry Congeable.

¶ Diſparagement in Marriage.

The Etimology of the word (Diſparagement) 80 a *.

The ſeveral kinds of diſparagements in marriage, and what ſhall be ſaid a diſparagement, and what not, 80 a ¶ b † 82 a †.

The penalty incurred by the Lord for ſuch diſparagement, 80 b ¶.

Where a diſparagement by one Joyntenant ſhall be a forfeiture of the wardſhip as to both, 80 b ¶.

Upon diſparagement to the heir who ſhall enter and ſeiſe the Gardein, and who not, 81 a †.

Where the heir after diſparagement ſhall be in ward again, and where not, 80 b ¶.

Vide tit. Marriage & Wardſhip.

¶ Diſſeiſin.

The definition of a Diſſeiſin, and the ſignification of the word, 153 b * 181 a †.

How it differeth from an abatement, intruſion, &c. vide tit. Abatement.

What ſhall be ſaid a diſſeiſin of a rent ſeck to have an Aſſiſe, and what not, 153 a b * 161 * ¶.

What ſhall be ſaid a diſſeiſin of a rent ſervice, and what not, 160 b 161 b a b ¶.

What ſhall be ſaid a diſſeiſin of a rent charge, 161 b † ¶.

Where a man ſhall have ſeveral Aſſiſes for one diſſeiſin of one and the ſame rent, 153 b ¶.

Where an Aſſiſe lyeth againſt a Coadjutor, or Counſellour to a diſſeiſin, notwithſtanding the death of the tenant, 180 b ¶.

Where the agreement of him in the reverſion to a diſſeiſin of the tenant for life to his uſe ſhall make him a diſſeiſor in fee, 180 b ¶.

Where a diſſeiſin of the tenant in a Præcipe by the Demandant to the uſe of others ſhall not abate the writ, 280 b ¶.

Where the entry of a man into lands of his own wrong ſhall be a diſſeiſin, notwithſtanding his claim to hold at the will of the tenant, 271 a †.

Where a particular tenant holding over his eſtate ſhall be reputed a diſſeiſor, abator, &c. and where a tenant at ſufferance, 271 a † * vide tit. Tenant at Sufferance.

Where he in the remainder for life diſſeiſe the particular tenant, by the death of the tenant the diſſeiſin ſhall be purged, 276 a *.

Where the confeſſion of a diſſeiſin ſhall be prejudicial to the tenant in a real action, and where not, 287 a *.

Where the payment of rents, or ſervices to a ſtranger by the tenant ſhall be a diſſeiſin to the Lord, and where not but at his election, 323 a & b 324 a & b.

Where and to what purpoſes a feme covert ſhall be ſaid a diſſeiſoreſſe without her proper act or entry, and where and to what not, vide tit. Coverture.

Where continuance in poſſeſſion after the claim of him that right hath ſhall be a diſſeiſin, vide tit. Continual Claim.

Where a tenant for years, Gardein, tenant, by Legit, &c. by their feoffment ſhall be diſſeiſors, 330 b * 367 a * b †.

Where one Joyntenant may diſſeiſe his companion, and what judgment ſhall be given upon the recovery in an Aſſiſe, vide tit. Joyntenants & Judgement.

What acts by a diſſeiſor ſhall be good to bind the diſſeiſee, and what not, 35 a * 357 b †.

Vide tit. Aſſiſe.

¶ Diſtreſs.

The derivation of the word, 96 a †.

Of what things a diſtreſs may be taken, and of what not, 47 a ¶ b †.

How the diſtreſs ought to be demeaned, 47 b †.

In what ſhall be ſaid a ſufficient pound to impound a diſtreſs, and what not, 47 b †.

Where the Owner may make reſcous of a diſtreſs taken without cauſe, and where not, vide tit. Reſcous.

Where a diſtreſs in the night ſhall be good, and where not, 142 a *.

Diſtreſs inſeparably incident to every ſervice, 150 b 151 b †.

For what ſervice incertain the Lord may diſtrain, and for what not, 96 a †.

Where

The Table.

¶ Where a diſtreſs lyeth for a rent ſeck, 153 a †.
¶ Where the Lord may diſtrain the cattel of his tenant out of his fee, and where not, 161 a *.
¶ Where the Owner may make Rescous of a diſtreſs taken for damage feasant out of the land, in which, &c. ibidem.
¶ Where a diſtreſs lyeth by Executors for arrearages of rents, vide Stat. 32 H. 8 cap. 37.
¶ Where the Grantee of a Seigniory, or reverſion ſhall diſtrain without attornment, and where not, vide tit, Attornment.

¶ Double Plea.

Where and why ſuch plea not allowable in Law by one tenant or defendant, 303 a ¶ 304 a *.
¶ Where in Pleas dilatory duplicity of matter may be uſed, secus in Pleas peremptory and perpetual, 304 a *.
By what means a man having divers diſtinct matters in excuſe or bar of an action may take advantage of them all, 304 a ¶.
Vide tit, Pleading.

¶ Dower.

The definition and derivation of Dower, 30 b ¶.
The divers kinds of dowers, 33 b * 39 b ¶.
The deſcription of Dower at the Common Law, 30 b ¶ 33 b *.
¶ What things requiſite to the conſummation of dower, 31 a * 32 a ¶.
The wife of what perſon ſhall have dower of the lands of her husband, & of what not, 30 b † 31 a *.
The priviledges incident to dower, 31 a *.
Of what inheritances the wife ſhall have dower, and of what not, and in what manner they ſhall be aſſigned unto her, 30 b † * 32 a † * 37 b ¶ 164 b * 165 a † 307 a *.
Of what Caſtle or Manſion houſe the wife ſhall be endowed, and of what not, 30 b † 31 a * 165 a ¶.
Of what ſeiſin of her husband the wife ſhall be endowed, 31 a ¶ 266 b * 358 b †.
¶ Where the wife ſhall not be endowed of the ſeiſin of her husband had by intruſion upon the Kings poſſeſſion, 30 b †.
Dos de dote. where it ſhall be, and where not, 31 a ¶ b † 40 b ¶.
¶ Where the wife ſhall be endowed of an eſtate of her husband determined, 31 b *.
¶ Where the wife ſhall not be endowed upon a remitter by alteration of the eſtate to the heir, 31 b ¶.
¶ Where the wife ſhall not be endowed, albeit the iſſue by poſſibility may inherit, & e converſo 31 b ¶ 40 b †.
¶ Where the wife being an Alien or Jew ſhall be endowed, and where not 31 b ¶.
¶ Where the wife ſhall have dower of a thing ſuſpended or extinct, and where not, 32 a *.
¶ Where the wife ſhall be endowed according to the improvement, or decay of the value of her husbands eſtate after his death, and where not, 32 a * ¶.
¶ Where the wife divorced ſhall have dower, and where not, 32 a ¶ 33 b †.
¶ Where the wife ſhall loſe her dower by Eloyement, and where not, 32 a ¶.
¶ Where the wife ſhall be endowed in ſeverality by metes and bounds, and where not, 32 b †.
¶ Where a charge ſhall be good againſt the wife made after her title to dower, and where not, 32 b † 33 a * 173 a ¶.
¶ Where the wife ſhall loſe her dower by the attainder of her husband, and where not, 31 a * 37 a † 41 a * ¶ 392 b *.
¶ Where the wife ſhall recover damages in a writ of dower, and where not, 32 b ¶.
¶ What ſhall be ſaid a good plea in dower to bar the wife of damages, 33 a †.
¶ To what purpoſes the dower of the wife ſhall be ſaid a continuance of the eſtate and poſſeſſion of her husband, and to what not, 241 a † * 244 a ¶.
Of what age the wife ought to be to have dower, 33 a * ¶ 37 a *.
¶ What ſhall be ſaid a good marriage as to dower, and what not, 33 a * ¶ b †.
¶ Where the diſability of the wife during coverture, being removed before the death of her husband ſhe ſhall be endowed from the firſt ſeiſin of her husband, and where not, 33 a ¶.
¶ Where the wife ſhall have dower which cannot have an appeal of the death of her husband, & e converſo, 33 b †.
Upon what death of the husband the wife ſhall be endowed, and upon what not, 13 b * 132 b †.
¶ Where by cuſtom the wife ſhall be endowed of the whole, & where of the moity, and where but of the fourth part of her husbands eſtate, and in what place ſuch cuſtom is pleadable, 33 b ¶ 110 b ¶ 111 a †.
The deſcription of dower ad oſtium Eccleſiæ, 34 a †.
¶ Where ſuch dower ſhall be good without deed, 34 a ¶.
At what age the husband may endow his wife ad oſtium Eccleſiæ, 34 a * 38 a *.
Such endowment not good by tenant in tail, 38 a †.
¶ Where the wife ſhall enter into her dower after the death of her husband without aſſignment, and where not, 34 b † * 37 a ¶.
¶ What things are requiſite to aſſignment of dower, 34 b ¶ 35 a † *.
By what perſon ſuch aſſignment may be made, 34 b ¶ 35 a *.
¶ Where aſſignment of dower by a Diſſeiſor, &c. ſhall be good againſt the Diſſeiſee, and where not, 35 a * 357 b †.
¶ Where one tenant of the land ſhall take advantage of an aſſignment of dower made by another tenant, and where not, 35 a †.
Of what things aſſignment of dower may be made, 34 b ¶ 39 a *.
¶ Where an aſſignment of dower ſhall work a degree to have a writ of entry in the Per, and where not, 239 a †.
The deſcripton of dower ex aſſenſu patris, and of what tenements ſuch endowment may be made, 35 a ¶.
By what perſon ſuch endowment ſhall be good, nay by what not, 35 b † * 37 a *.
At what age a man may endow his wife, ex aſſenſu patris, 35 b * 38 a *.
Dower ex aſſenſu matris, fratris, &c. where good, and where not, 35 b †.
Of what part of the land dower ex aſſenſu patris, and ad oſtium Eccleſiæ may be made, 34 b † 36 a ¶.
¶ Where the wife may diſagree to dower ad oſtium Eccleſiæ, or ex aſſenſu patris, and where agreement to one dower ſhall bar her of another, and where not, 36 a ¶ b † vide tit. Joynture.
¶ What ſhall be ſaid a ſufficient act by the wife to determine her election to dower, and what not, 145 a ¶.
The deſcription of dower de la pluis beare, 38 a ¶.
¶ Where the wife ſhall retain for part, and recover againſt the Garnein Chivalry for part, 39 a †.
¶ Where a writ of dower lyeth againſt the Garnein, and where againſt the heir, 38 b †.
¶ What ſhall be a good plea by the Garnein in bar of dower, and what not, 39 a *.

The Table.

Where a writ of admeasurement of dower lyeth by the Gardein, and where by the heir, vide tit. Admeasurement.

What shall be the surest provision for the wife for her dower, 34 b * 36 b ¶ 37 a †.

Where a man by having issue shall be tenant by the curtesie, where a woman shall not have dower, vide tit. Curtesie of England.

Where tenant in dower shall be liable to wast after assignment of her estate, and where not, vid. tit. Wast.

Where after assignment he ought to attorn to the grant of the reversion, vide tit. Attornment.

Collateral warranty no bar in a writ of dower, vide tit. Warranty.

Where a Protection may be cast in a writ of dower, and where not, 131 a †.

Dreuchs, quid, 5 b *.

Dunum, Duna, sive Dun, quid 4 b ¶.

¶ Droit vide tit. Right.

¶ Dum fuit infra ætatem.

Where and by whom such writ lyeth, 247 b ¶.

Where baron and feme infants joyn in a feoffment by Indenture, the feme after the death of her husband may have a Dum fuit infra ætatem, secus where her self was of full age at the time of the feoffment, 337 a * vide tit. Entry Congeable.

Where an Infant tenant pur auter vy make a feoffment, and cestuy que vy die, a Dum fuit infra ætatem lyeth not, 336 b ¶.

Where upon a feoffment by two Joyntenants within age, a Dum fuit infra ætatem lyeth by them severally, 337 a ¶.

Where two Joyntenants, one within age, and the other of full age, make a feoffment, the infant surviving shall have a Dum fuit infra, &c. but for a moyety, 337 b † vide tit. Joyntenants.

Vide tit. Infant.

¶ Dum non Compos mentis.

The several sorts of Non compos mentis, 247 a †.

By what means a feoffment or other estate made by a Non Compos mentis may be avoided during his life, and by what not, 247 a ¶ b †.

Where a fine or recovery by a Non Compos mentis shall bar his heir, 247 a ¶.

Where the entry of the heir of a Non Compos mentis shall be Congeable, where the entry of the Ancestor was not, vide tit. Entry Congeable.

Where a Non Compos mentis may be a purchasor, 2 b ¶.

By what person a writ of Non Compos mentis lyeth, and by what not, 247 b ¶.

Where the act or wrong of a Non Compos mentis shall be imputed to him, and where not, 247 b †.

Attornment by a Non Compos, &c. void, vide tit. Attornment.

Vide tit. Idiot.

¶ Eyer.

The signification of the word, 293 a ¶.

The authority and manner of proceeding of the Justices in Eyer unchanged, 293 b †.

¶ Election.

Where a man having several remedies for one thing, the election of one remedy shall conclude him as to the other, and where not, 146 a †.

Where an election is given to several persons, the election of which of them shall stand, 145 a †.

Where of two several things who shall have the election, 145 a *.

Where such election ought to be in the life of the parties, and where not, 145 a †.

Where a man by his act and wrong shall lose his election, 145 a *.

Where the privilege of election shall discend, or is transferrable over, and where not, 46 b † 166 b † * 186 b ¶.

What shall be said a sufficient act to determine the election of a Grantee of a rent charge to make it an annuity, or a rent, and what not, vide tit. Annuity.

What act by the wife shall determine her election of dower, and what not, vide tit. Dower.

Where the Lord may elect to have the wardship of the heir of his tenant, or take himself to the services 83 b ¶.

Where the Lord shall have election to avow upon the Feoffor or Feoffee, and where not, vide tit. Avowry.

Where it shall be in the election of the tenant to vouch, &c. by reason of a warranty in deed, or in law, 384 a ¶ vide tit. Warranty.

¶ Elegit.

Such writ whence so called, and where it lyeth, 289 b †.

What things the Sheriff may deliver in execution upon such writ, and what not, 289 b † vide Stat. W. 2 c. 18.

Vide at large in tit. Execution.

¶ Elopement.

Elopement, what, 32 a ¶ b †.

Where the wife shall lose her dower by Elopment, and where not, vide tit. Dower.

¶ Emblements.

Where a Lessee at will shall have the emblements after his estate determined, and where not, 55 a ¶ b *.

Where tenant for life or his executors shall have the emblements after his estate ended, and where not, 55 b †.

Where the Lessee for years of a tenant for life shall have the corn after the death of his Lessor, 55 b †.

Where the husband sow the land of his wife, his executors shall have the corn, 55 b *.

Where the husband joyntenant with his wife sow the ground, the wife surviving shall have the corn, ibid.

Where land discend to a daughter who sow the ground, the son born after shall not have the corn, 55 b *.

Where the estate of the tenant is defeated by a right paramount, forfeiture, condition, &c. the tenant shall not have the corn, 55 b *.

Where the disseisee by his regress shall have the emblements severed before his entry, ibid.

Where tenant by stat. merchant sold the land, and after is satisfied by a casual profit, he shall have the emblements, 55 a *.

The remedy which the tenant hath to come by the corn after his estate ended, 56 a †.

¶ Entry

The Table.

¶ Entry, and Entry Congeable.

The divers writs of Entry, 239 a *.
The ſeveral writs of entry for diſſeiſin, and where each writ lyeth, 238 b * ¶.
What ſhall make a degree to have a writ of entry in the Per, and what not, vide tit. Degrees.
What remedy the diſſeiſee had at the common law, where the land was conveyed beyond the degrees, and what at this day, vide tit. Marlebridge cap. 1 & 2 mo.
Where an entry generally into one acre ſhall be ſaid an entry into others, and where an entry into part ſhall be an entry into the whole, and where not, 15 a ¶ b † 252 b ¶.
Where the entry of one parcener ſhall be accounted in law the entry of both, and where not, 243 b * 373 b ¶ 374 a *.
Where the entry of a ſtranger to the uſe of him that hath right or title of entry ſhall veſt the eſtate in him before agreement, and where not, 245 a ¶ 258 a †.
What act upon the land by him that hath a right of entry ſhall amount to an entry, and what not, 49 b ¶ 245 b * 368 a *.
Where an entry into one acre in the name of other acres in the ſame County ſhall be ſufficient for both and where not, 252 b per tot. pag.
Upon what conveyances the freehold ſhall be ſaid in the purchaſor before entry, and upon what not, vide tit. Freehold.
Where upon a condition broken a man ſhall be adjudged in poſſeſſion maintenance without entry or claim, vide tit. Condicions and Continual Claim.
Where a tortious entry ſhall gain an Inheritance by wrong which is in Abeiance, vide tit. Abeiance.
Why antiently a long poſſeſſion, and why at this day a diſcent ſhall take away the entry of him that right hath, 237 b *.
The diſcent of what inheritances ſhall toll an entry, and of what not, 237 b ¶.
The diſcent of what eſtate ſhall toll an entry, and of what not, 239 a ¶.
Where the dying ſeiſed of a reſidue in law ſhall toll an entry, 239 b †.
Where the dying ſeiſed of a reverſion or remainder ſhall toll an entry, and where not, 239 b *.
Where the diſſeiſor make a Leaſe for his own life and dyeth, this diſcent ſhall not toll the entry of the diſſeiſee, 239 b *.
Where a collateral diſcent ſhall toll an entry, as well as a lineal, 239 b ¶.
Where a diſcent after a recovery and before execution ſhall take away the entry of the recoveror, and where not, 238 a †.
Where a diſcent caſt the diſſeiſee being in priſon ſhall not toll his entry, ſecus of a perſon retrait, as where the diſſeiſin was before imprisonment, 258 b * 259 a per tot. pag.
Where a diſcent caſt the diſſeiſee being beyond ſea ſhall not bar his entry, 260 a ¶ b 261 a 262 b †.
Where a diſcent caſt in time of vacation of an Abbathy or other ſole Corporation ſhall not toll the entry of the ſucceſſor, 263 b 264 a †.
Where a title of entry ſhall not be tolled by a diſcent, 240 a * ¶ b †.
Where the entry of the diſſeiſee ſhall be congeable upon the Lord by eſcheat, and where not, 240 a †.
Where upon the diſcent the heir is remitted to another eſtate then his Anceſtor dyed ſeiſed of, the entry of the diſſeiſee is congeable, 238 a ¶ b †.
Where a diſſeiſor make a gift in tail, and after diverts aliens the iſſue in tail dye without iſſue, the entry of the diſſeiſee ſhall be congeable upon him in the reverſion or remainder 238 b † 240 a *.
Where the entry of the diſſeiſee ſhall be congeable upon the diſſeiſor notwithſtanding divers mean diſcents, of a parthale of the freehold from his father, upon whom the land diſcended, 238 b * 242 a † 248 a ¶.
Where an Infant leſſee for life of a diſſeiſor is diſſeiſed, and a diſcent caſt the entry of the diſſeiſee ſhal be congeable upon the Infant after his reverſion, 238 b *.
Where the entry of a Patentee of the King, or a deviſee of lands ſhall be congeable notwithſtanding a diſcent caſt upon an intention, 111 a ¶ 240 b *.
Where the entry of the diſſeiſee ſhall be congeable upon the wife of the diſſeiſor after endowment notwithſtanding the diſcent, 240 b 241 a †.
Where upon the abatement of the diſſeiſee the wife of the diſſeiſor recover in dower, the entry of the diſſeiſee after ſhall not be congeable, ſecus if he had aſſigned her dower in pais, 241 a *.
Where the entry of the diſſeiſee upon tenant for life ſhall deveſt the reverſion veſted in the King, 241 a ¶.
Where a diſcent mediate to the dying ſeiſed of the Anceſtor ſhall not ouſt the diſſeiſee of his entry, 241 b †.
Where a diſcent caſt upon the diſſeiſin or abatement of the younger brother ſhall toll the entry of the eldeſt, and where not, 242 a * ¶ b 243 a †.
Where a diſcent caſt upon the abatement of one parcener ſhall toll the entry of her ſiſter as to her moity, and where not, 243 a ¶ b †.
Where the entry of the Baſtard ſhall be congeable upon the iſſue of the baſtard eigne after a diſcent, and where not, vide tit. Baſtardy.
Where a man dyes ſeiſed, his wife miſcent, a diſcent caſt upon the abatement of a ſtranger ſhall toll the entry of the iſſue born after, 245 b.
Where a diſcent ſhall take away the entry of an Infant that right hath, and where not, 245 b ¶ 246 a *.
Where a diſcent caſt during the Coverture ſhall toll the entry of the feme, and where not, 246 a * ¶ b † 353 b ¶.
Where the entry of the heir of a Non Compos mentis ſhall be congeable notwithſtanding a diſcent or alienation in the life of his anceſtor, 247 a b * ¶.
In what caſes the entry of the heir ſhall be congeable, where the entry of his anceſtor was not, 247 a † b *.
Where the entry of an Infant after his full age ſhall be congeable upon his alienee, 248 a *.
Where an Infant diſſeiſor enter upon the heir of his alienee, the entry of the diſſeiſee ſhall be congeable upon the Infant, 248 a †.
Where a diſcent by reaſon of poſſeſſion in religion ſhall not toll the entry of the diſſeiſee, 248 b.
Where a diſcent ſhall not toll the entry of a teſtee for years tenant by elegit, &c. 249 a †.
Where a diſcent in time of war ſhall not toll an entry, 249 a ¶ b †.
Where a dying ſeiſed and a ſucceſſion ſhall not toll an entry 250 a †.
Where the husband within age diſcontinue the land of his wife, the entry of the feme after his death ſhall be congeable upon the diſcontinuee, 336 b ¶ 337 a †.
Where an Infant tenant in general tail in the right of his wife diſcontinue in tail and dye, the entry of his heir or feme ſhall be congeable upon the diſcontinuee, 337 a †.
Where an Infant tenant in tail make a feoffment,

The Table.

and after is attainted and die, the entry of his issue is not congeable upon the feoffee, 337 a*.

Where two Infants ioyntenants make a feoffment the entry of the survivor shall be congeable into the whole, 337 a ¶ vide tit. Dum fuit infra ætatem, & Joyntenants.

Where the baron discontinue the land of his feme for life by the surrender of the tenant the entry of the heir of the feme is congeable upon the baron in the life of tenant for life, 338 a † ¶ vide tit. Surrender.

Where baron and feme and a third person are ioyntenants, and the baron make a feoffment and dye, the entry of the third person surviving shall be congeable into the whole, and where but to a moity, 327 b*. vide tit. Joyntenants.

Where a disseisor make a Lease for life and levy a fine of the reversion, and five years pass, the entry of the disseisee is not congeable upon the tenant for life, 298 a †.

Where upon Mountmure pleaded or disclaimer in a Formedon, the entry of the issue in tail shall be congeable upon the tenant before iudgment, 362 a ¶.

Where two Joyntenants, one within age, and the other of full age be disseised and a discent cast, and he of full age dye, the entry of the other shall be congeab.e into the whole, 304 b ¶.

Where the entry of the disseisee shall be congeable upon the heir of the disseisor at this day, and where not, vide stat. 32 H. 8 cap. 33.

Vide tit. Continual Claim, & Discontinuance.

¶ Error.

Where, and upon what iudgment such writ lyeth, and where and upon what not, 168 a † 288 b †.

Where a release of all actions shall be a good plea in a writ of Error, and where not, 288 b ¶ Vide tit. Release.

Where after recovery in a real action a release by the tenant of all his right in the land shall bar him of a writ of error, 280, a †.

Where a recovery by default against a man out of the realm in the Kings service shall not be avoided by error, 260 b*.

¶ Escheat.

The Etymology and signification of the word, 13 a* ¶ 92 b †.

How many wayes an Escheat may happen, 13 a ¶ 92 b*.

The several writs of Escheat upon attainders, vide tit. Attainder.

Where an Eschеat by reason of Attainder shall relate to the time of the Felony committed, and where not, vide tit. Relation.

Where upon the dissolution of a Corporation their lands shall revert to the donor, and shall not escheat, 13 b*.

Where the acceptance of Homage or Fealty shall bar the Lord of his escheat, vide tit. Acceptance.

Where the acceptance of rent shall bar the Lord of his escheat, and where not, vide ibid.

Where the disseisor make a feoffment or dye seised, upon the death of the disseisee without heir an escheat lyeth not, 268 b †.

Where the father dyeth his son being attainted of treason, the lands of the father shall escheat, and not go to the King, 13 a ¶.

Where the entry of him that right hath shall be congeable upon the Lord by escheat, and where not, vide tit. Entry Congeable.

Where the Lord by escheat may rebutt by reason of a warranty, vide tit. Rebutter & Warranty.

Vide tit. Attainder, Corruption of blood, & Heir.

¶ Escheator.

His office and duty, 13 b †.

Why so called, ibid. 92 b †.

The number of them in ancient and modern times, ibidem.

¶ Escuage.

The Etymology of the word, 68 b* ¶.

The several kinds of Escuage, 72 b ¶.

For what time such tenant is bound to attend upon the King in his war, 68 b ¶ 69 b ¶.

From what the time of attendance shall be computed, 70 a ¶ 71 a ¶.

Where the tenant may perform his attendance by deputy, 70 a † b † 83 a †.

Where attendance by legant paravail shal excuse all the mesnes, 69 b ¶ 70 b ¶.

Where attendance by one Joyntenant shall excuse his companions, ibid.

What persons are exempted from personal performance of this service, 70 b ¶.

Where escuage shall be assessed by Parliament, and for what cause, and when it was last assessed, 72 a ¶ b †.

Where the tenant dying in the Army his heir shall be excused of Escuage, 72 b †.

Where the tenant of the King by escuage shall have escuage of his own inferiour tenants for their not attendance in the war, and where not, 72 b † 73 a ¶ b † ¶.

Where and what escuage shall be Knights service, and what socage, 72 b ¶ 87 a.

Escuage generally, which shall be intended, 73 a †.

What services incident to a tenure by Escuage, 73 a*.

The remedy which Lords have to come by their escuage, 73 b*.

Where an action of debt lyeth for escuage, and where not, vide tit. Debt.

How it shall be tryed whether the tenant was with the King in his war, or not, 74 a*.

What shall be said a Voyage royal, wherein such tenant is bound to attend, 69 b* 130 b*.

¶ Essoigne. vide tit. Protection.

¶ Estates.

The signification of the word, 345 a*.

Status unde dicitur, 9 a*.

Where a man shall have an estate of inheritance without the words (Heirs or Successors) vide tit. Heir & Devise.

Where there may be two estates in fee-simple of the same land at the same time, vide tit. Fee simple.

Where two shall have joynt estates of freehold, and several inheritances, vide tit. Joyntenants & Tail.

Where two several estates of the same land may be simul and semel in the same person, and how and when they shall be said to be executed, 54 b ¶ 182 b 184 a* ¶ b † 338 b ¶.

Where the estate of a man for his own life, shall be esteemed higher than for the life of another man, and where not, 41 b ¶ 42 a †.

Where several freeholds may be derived out of an estate for life, and where not, 42 a †.

Where a man shall have an estate for life determinable at will, 42 a ¶.

Where an incertain interest in lands shall be deemed in Law an estate for life, and where but at will, 42 a*.

Where tenant in tail grant rerum statum, what shall pass by such grant, vide tit. Grants.

Where

The Table.

Where tenant for life having a fee expecting upon a remainder in tail, grant totum statum, both estates shall pass, 345 a ¶.
Vide tit. Fee simple, Freehold & Leases.

¶ Estoppel.

THe signification and derivation of the word, 352 a †.
The several kinds of Estoppels, and by what matter or act an Estoppel may be wrought, and by what not, 352 a * ¶.
Where Estoppels ought to be reciprocal to bind both parties, 352 a ¶.
Where every Estoppel ought to be precisely affirmative, and certain to every intent, 303 a * 352 b †.
Where matter neither traversable nor material, shall be no Estoppel 352 b †.
Where acceptance before title accrued shall work no Estoppel. ibidem.
Where an Estoppel against an Estoppel shall put the matter at large, 352 b †.
Where the adverse party shall not be Estopped to take advantage of a truth apparant in the Record, 352 b *.
Where a man shall take advantage of an Estoppel without plea, vide tit Verdict.
Where the acceptance of an estate by the husband to him and his wife, shall Estop him to alleage a Remitter to the wife, 352 a.
What persons shall be bound and take advantage of Estoppels, and what not, 352 a ¶ b †.
Of what Estoppels that go to the person, a stranger shall take benefit, and of what not, 128 b † 352 b *.
Where an Estoppel of part of the mother shall not bind the heir claiming from his father, 365 b *.
Where an Estoppel to the son descending mediately upon his father, shall bind him, and where not, 12 a †.
Where a Deed indented shall be an Estoppel, and where not, 45 a * 47 b ¶ 363 b ¶.
Where a man accept a Lease of his own land by indenture how long the Estoppel shall be said to continue, 47 b ¶.
Where in a Nuper obiit the Defendant claim by purchase, the Plaintiff may have a Mordancester against her for the whole, 146 b †.
A Conclusion, what, and whence derived 37 a † 170 a ¶.

¶ Estovers.

THe derivation of the word, 41 b ¶.
What Estovers of common right belong to a tenant for life, years, &c. ibidem.

¶ Etymologies.

THe use and benefit of Etymologies, 68 b * 86 a † 87 a † 106 b † 109 a ¶ 137 a ¶ 177 a † &c.

¶ Evidence.

THe derivation of the word, 283 a ¶.
The extent of the word, and what matters shall be said good Evidence to an enquest, ibidem.
Where the special matter shall be pleaded, and where it ought to be given in Evidence, vide tit. Pleading.
Where a thing done beyond the seas may be given in Evidence, 261 b *.
Vide tit. Trial & Verdict.

¶ Exchange.

THe description of an Exchange, 50 a ¶.
Of what things an Exchange may be made, and of what not, 50 b * ¶.
What things requisite to the perfection of an Exchange, 51 b †.
Where an Exchange shall be good without Deed, and where not, 50 a ¶ b *.
Where an Exchange shall be good, albeit there be no transmutation of possession, 50 b ¶.
What equality ought to be observed in Exchanges, and what not, 51 a per tot. pag.
Where an Exchange of lands with the King shall be good, 51 a *.
Where an Exchange by an Infant shall be good, and where voidable, 51 b *.
How an Exchange and Partition differ, vide tit. Partition.

¶ Excommunication.

EXcommunicatio quid, & quotuplex, 133 b ¶.
The condition of a person Excommunicated, 133 b ¶.
What persons are disabled thereby to bring an action, and what not, 134 a †.
Where an Excommunication certified by a Bishop, shall not disable the Plaintiff in an action against the same Bishop, ibidem.
By whom Excommunications ought to be certified, and what certificate shall be good, and what not, 134 a *.
Where an Excommunication by the Pope, or other forrain authority, shall not disable the party, ibid

¶ Execution.

THe legal acception of the word, 154 a ¶.
Divers Pastimes in Law concerning Executions, 289 b †.
Where the Demandant may enter, or distrain after judgment and before Execution, and where not, 34 b *.
Where upon a judgment in debt the Plaintiff shall have Execution of the lands which the Defendant had at the time of the writ brought, and where not, 102 a ¶.
Where by discent of part of the lands in Execution to the Conusee, the whole Execution shall be avoided, 150 a †.
Where tenant in tail recover in value, and dye without issue, before execution, execution shall be sued by him in the reuersion, 252 a *.
Where lands, &c. shall be in Execution upon Statute Merchant, Staple, Recognizance, &c. vid. Stat. Actio. Burnel. De mercatoribus, & 23 H. 8 cap. 6.
Where lands, &c. in execution are evicted, what remedy the Recogniſee, or Obligee hath at this, and where a Scire facias lyeth to extend other lands, and where not, vide Stat. 32 H. 8 ap §.
Where after a perfect Execution by extent returned and of record, there shall be no re-extent upon any eviction, 290 a ¶.
Where no execution by Elegit, Statute Merchant, &c. shall be sued against the heir, or his mother endowed by the heir during his minority, 290 a ¶.
Where a Capias ad satisfaciendum lay at the Common Law, and where at this day, 290 b †.
Within what time writs of execution ought to be sued forth, and where, being commenced within the time, they may be continued after, 290 b * vide Stat. W. 2. cap. 45.

The Table.

Where to a writ of execution no plea can be admitted, but for matter since the judgment, the party is put to his Audita Querela, 290 b *.

Where a release of all debts, duties, demands, or executions shall discharge an Execution, secus of a release of all actions, 76 a † 289 a * 291 a * ¶ b *.

Where a release of all suits shall bar an Execution, and where not, 291 a *.

Where an Execution upon a recognizance may be defeated by a Deed of defeasance, 291 a ¶.

Where a man may have Execution upon a recognizance the first day, without staying till all the days incurred, 292 b ¶ vide tit. Debt. & Payment.

¶ Executors.

Where a remainder for years limited to the Executors of J. S. shall vest presently in J. S. 54 b ¶.

Where the Executor shall have remedy for the arrearages of rent which the testator in his life could not, 146 b †.

Where Executors shall be bound by the Obligation of their Testator without naming, 209 a ¶.

In what respects the Executor shall be said more to represent the person of the Testator, than the heir the person of the Ancestor, 209 a ¶ b ¶.

Where an Executor shall be reputed in Law an Assignee, and where not, 210 a *.

Where an Executor may release an action before probate of the Testament, 292 b †.

Where an account lyeth by and against an Executor or Administrator, and where not, vide tit. Account.

What shall be said Assets in the hands of an Executor or Administrator, and what not, vide tit. Assets.

Where a man shall have an action of debt against his own Executors 133 b *.

Where the Executors of a Bishop shall have a ward which fell in the life of the Bishop, secus of a presentation to a Church which voided in his life, 90 a * ¶ 388 a *.

Where a Church voideth in the life of the Testator, the Executors shall present and not the Guardein in Chivalry, secus where the tenant of the King in capite dies, &c. 388 a *.

Where the Obligor make the Obligee his Executor, albeit the action be gone, the Executor may retain, vide tit. Obligation.

Where an Infant make his debtor his Executor, the debt is extinct, 264 b ¶.

Where a feme Executrix take the debtor to husband, notwithstanding the debt remains ibidem.

Vide tit. Devise & Testament.

¶ Exempla illustrant non restringunt legem, 248 ¶.

¶ Exposition of words.

Where the word (Aut) shall be taken politively, and where by way of similitude, 17 b *. 43 b *.

Where the word (Or) shall be taken in the Conjunctive, and where in the Disjunctive, 99 b † 383 a ¶.

Where the legal Termination (in agium) in composition signifie service or duty, 86 a † 109 a *.

The word (Prochain amy) how taken in Law, 88 a *.

How many things the Adjective (Liber) distinguisheth in Law, 94 a ¶.

The exposition of the words (Dedi & Concessi) in Grants, 301 b vide tit. Grants & Confirmation.

Of the word (Semisi) 301 b ¶.

Of the word (Volo) 301 b ¶.

Of the word (Eadem) and how it shall have relation, 20 b † 385 b *.

Of the word (Predict.) and the force of its relation, 20 b †.

Of the word (Hæreditament) 6 a † 16 a * ¶ 383 a ¶ b †.

Of the words (Proxima advocatio,) 378 b ¶ 379 a †.

Of the words (Sans impeachment de wast) 240 a †.

Of the words (Demeine land) 178 ¶.

Of the words (A Confessione) 46 b ¶.

Of the words (from henceforth) ibidem.

Of the words (from the date, or from the day of the date) ibidem.

Of the words (medietas advocationis & advocatio medietatis Ecclesiæ) vide tit. Advowson.

¶ Extent.

Extents by Elegit, Statute Merchant, or Staple, &c. vide Stat. W. 2 cap. 18 Stat de Action Burriel, & de Mercatoribus, 23 H. 8 cap. 6 32 H. 8 cap. 5 & tit. Execution.

¶ Extinguishment.

The signification and derivation of the word, 147 b *.

Where by purchase or part of the Land out of which, &c. the whole rent charge shall be extinguished, 147 b ¶ vide tit. Apportionment.

Where by discent of part of the tenancy to the Lord, an entire rent service shall be extinct, and where not, 149 a †.

Where by purchase of part of the tenancy by the Lord, an entire rent service shall be extinct, and where not, 149 a * ¶ b †.

Where by such purchase of the Lord an Heriot shall be extinct, and where not, vide tit. Heriot.

Where by the grant of the Lord of the services of his tenant by Castlegard, the Seigniory shall be extinct 83 a *.

Where by purchase of the tenancy by the Lord Paramount the Mesnalty shall be extinct, vide tit. Mesnalty.

Where and to what purpose an estate by owner or extinct, shall be said to have continuance, and where, and to what not, 185 a * 338 b † *.

Where a grant of the services or rent to the tenant shall enure to him by way of extinguishment, 307 a ¶ b † 313 a vide tit. Release.

Where the remainder in fee of the tenancy escheat, the Seigniory, as to the whole, shall be extinct, 312 b †.

Where a Bishop is seised of a rent, and the ter-tenant infeoffe him and his successours, by the entry of the Lord for Mortmaine the rent is not revived, secus where tenant for life grant a rent in fee, and infeoffe the Grantee, upon whom the Lessor enter for a forfeiture, 338 b *.

Where the accession of a freehold in auter droit shall extinguish a term which a man hath in his own right, secus è converso, 338 b ¶.

Where the release of the Lord of all his right to the tenant and a Lessee for years of the Seigniory, shall extinguish thy Seigniory and state of the Lessee also, secus, of a Release to them and their heirs, 280 a *.

Where the Lord disseise his tenant, and is disseised, a release by the Disseisee to the second Disseisor shall not revive the Seigniory, secus if the tenant had been disseised by the Lord and a stranger, and had released to the stranger, vide tit. Releases.

Where by purchase of parcel of the land, out of which,

The Table.

which, &c. the whole common shall be extinct, and where not, vide tit Common.

¶ Where a Lease for years may ceale and revive again as to several persons, and where not, 46 a * ¶ b †.

¶ Where the re-entry of the Lessee upon the feoffee or his Lessor shall revive the rent reserved upon the lease, 319 a *.

Where the Grantee of a rent disseise the tenant, the regress of the tenant shall not revive the rent, ibidem.

Vide tit. Releases, & Suspension.

¶ Extortion.

The derivation and several acceptions of the word, 368 b *.

¶ What shall be said Extortion in Sheriffs, or other officers, and what not, 368 b † * vide Stat. W. 1 cap. 26.

The ordainment of the crime, 368 b *.

¶ Eye, quid 5 b ¶.

¶ Falsifying of Recoveries.

The signification of the word (Falsifie) 104 b †.

¶ What persons might falsifie a recovery at the Common Law, and what not, 146 a † * 104 b † vide Stat. Gloucest. cap 11.

¶ What persons may falsifie a recovery at this day, and what not, vide Stat. 21 H. 8 cap. 15.

¶ Where and by what matter the issue in tail may falsifie a recovery had against his Ancestor, and where, and by what not, 360 b ¶ 361 a †.

¶ Where he in the reversion or remainder shall falsifie a recovery had against tenant for life, vide tit. Forfeiture, & Stat. 14 Eliz. cap. 8.

¶ Where a Recovery shall be falsified by cause of covine or collusion, and by whom, and where not, vide tit. Covine & Recovery.

¶ Fealty.

The Etymology of the word, 67 b *.

The manner of doing fealty 67 b * ¶.

The difference between the fealty of a Freeholder, and of a Villain, 68 a †.

What person and tenant shall do fealty, and what not, 67 b ¶ 68 a * 68 a * 93 b †.

How Fealty differeth from Homage, 68 a per tot. pur.

The benefit which accrue to Lords by accepting fealty, 68 a ¶ 92 b.

Where tenant by fealty shall swear to do all services due, when after fealty done, no service is due, 62 a ¶.

To what tenures fealty is incident, and to what not, 23 a ¶ 93 a 95 b * 96 b ¶ 150 b ¶.

Fealty incident to Attornment, 104 a †.

Inseparably incident to every reversion, 143 a †.

How the oath of Fealty differeth from that of Allegeance, vide tit. Allegeance.

¶ Where a seisin of Fealty shall be a seisin of all other services, vide tit. Seisin.

Where the acceptance of fealty by the hands of the Dissesse shall bar the Lord of his Escheat, vide tit Acceptance.

¶ Fee Simple.

The signification and derivation of the word (Fee) 1 b * 2 a *.

The several sorts of fee simples, 1 b * 2 a ¶.

What words requisite to the passing of a fee simple, 8 b ¶ vide tit. Heirs.

How many several ways a fee simple may be purchased, 10 a *.

The ampleness of such estate, 1 a *.

¶ Where two fee simples may be of the same land at one time, and where not, 18 a ¶ 354 b *.

Fee generally, what fee it shall be intended, 19 a *.

A feoffment to one and the heirs of his father a good fee simple, 220 b † *.

Fee simple conditional, and the course of its discent at the Common Law, 19 a * ¶.

By the having of what issue such condition said to be performed, and of what not, 19 a *.

To what purposes the having of issue was a performance of the condition, and to what not, ibidem.

Where the sons only, and where the daughters only were inheritable to such estate, 19 a ¶.

¶ Where the alienation of the Donee after issue was a bar to his issue, or the Donor, and where not, 19 a ¶.

A grant to a man and his heirs tenants of the Manor of D. a good fee simple, 27 a ¶.

A grant by the King of a Barony to one and his heirs Lords of the Manor of K. a good fee simple qualified in the dignity, ibidem.

¶ Fees.

Where notwithstanding the Grantor oust his officer, his fee shall continue, and where not, 233 b † vide tit. Office.

Wherein an action by an Attorney for his fees, the Defendant shall not wage his Law, 295 a ¶ vide tit. Wager of Law.

Where the receiving greater, or other fees than are prescribed by the Statutes, shall be extortion, and where not, 368 b * vide tit. Extortion.

¶ Felony.

The signification and extent of the word, 391 a *.

By a pardon of all felonies, what crimes anciently, and what at this day are pardoned, 391 a *.

The several sorts and degrees of felony, and what forfeiture is incurred by each of them, ibidem.

Where upon attainder of felony in an appeal, the Defendant shall forfeit no Lands, but those he had at time of the outlawry pronounced, secus in an Endictment, 390 b * vide tit. Relation.

A pardon of all felonies, no pardon of Piracy at this day, 391 a ¶.

The punishment of a felon implyed in his judgement to be hanged, 392 b †.

¶ Where a Felon may be a purchasor, and to whose use, 2 b *.

Vide tit attainder.

¶ Feoffments.

The Etymology and signification of the word, 9 a ¶.

The antiquity of a Feoffment, ibid. 49 b *.

The several parts of a Feoffment, vide tit. Deeds.

What person may make a Feoffment, and what not, 42 b * ¶ 43 a †.

The Table.

By the delivery of the Deed of Feoffement, what estate paſſeth before livery of ſeiſin, 56 b ¶.
Where the Feoffement of a moity or third part of a mans land ſhall be good without Deed, 190 b *.
A Feoffement of the moity of a Mano^r to have with an Advowſon appendant not good without Deed, 190 b ¶.
Where a leaſe and releaſe ſhall amount to a Feoffement, 207 a ¶ vide tit. Conditions.
Where a Feoffement ſhall extinguiſh a condition or power of revocation, and where not, 237 a * vide tit. Conditions.
Where Ceſtuy que uſe and his Feoffees after 1 R. 3 and before 27 H. 8 joyn in a Feoffement, whoſe Feoffement it ſhall be conſtrued, 302 b †.
Where tenant for life and he in the reverſion or remainder in fee, tail, or for life joyn in a Feoffement, how it ſhall be conſtrued, 302 b vide tit. Confirmation & Surrender.
Where in pleading a feoffment of a Mano^r, livery and Attornment are implyed without being alleaged, vide tit. Pleadings.
Vide tit. Livery of ſeiſin.

¶ Ferdwit quid, 71 a †.

¶ Ferlingus, ſeu Ferlingum terræ quid, and what ſhall paſs by ſuch grant, 5 b †.

¶ Fines to the King.

The ſeveral acceptions in law of the word (Fine) 126 b *.
Fine to the King, what ibid. 127 a *.
How ſuch Fine differeth from an Amerciament, vide tit. Amerciament.
The difference between a Fine and a Ranſome, and where they ſhall be ſaid all one, 127 a *.
How and when Fines for alienation of lands grew firſt due to the King, vide tit. Alienation.
Fines of Copyholders, vide tit. Copyhold.

¶ Fines of Lands.

The deſcription of a Fine, and whence ſo called, 120 b ¶ 122 a † 262 a ¶.
What time was allowed by the Common Law to make claim after a Fine levyed, and what at this day, 262 a † 254 b ¶.
What perſons were barred by a Fine at the Common Law that could not make claim, and what perſons might make claim, and yet were not barred by ſuch Fine, 262 b † *.
Where a Fine levyed by tenant in tail ſhall be a bar to his iſſue, or them in the reverſion or remainder, and where not, 372 a ¶ b † vide Stat. 4 H. 7 cap 24.
Where a grant and render by Fine to a ſtranger to the writ and Conuſance ſhall be good to paſs a voidable eſtate to him in præſenti 353 a ¶ vide tit. Remitter.
What ſhall be ſaid a good Claim within the five years to avoid the eſtate of the Conuſee by fine, and what not, vide tit. Continual Claim.
Where a Diſſeiſor make a Leaſe for life, and levy a fine of the reverſion, and five years paſs, the eſtate for life is unavoidable, vide tit. Entry Congeable.
Where a Feme covert ſhall be concluded by a fine, and where not, 353 b † * vide tit. Remitter.
Where fines working wrong to third perſons ought not to be accepted, 38 a † *.
Where an Infant ſhall be bound by a fine, and where ſuch fine may be avoided by him during his nonage, and where after his full age, vide tit. Infant.
Where a fine levyed by a Non compos mentis ſhall be a bar to him and his Heirs, Vide tit. Dum non compos, &c.

¶ Firma whence derived, and how called in ſeveral Counties, and what ſhall paſs in a Grant by that name, 5 a *.

¶ Folkland quid 58 a †.

¶ Forcible Entry.

Force, what and how taken in Law, 161 b ¶.
Upon what Statute the writ of forcible entry is grounded, and where it lyeth, 257 b †.
Where divers perſons go to make a Forcible entry, of the violence uſed by one ſhall make them all guilty of force, ibidem.
Where the Maſter cometh with a greater number of ſervants than uſually attend him, his Entry ſhall be deemed forcible, 257 b †.
What number of perſons may commit a force, 257 a ¶.
Where an act ſhall be ſaid in Law to be done, vi & armis, or forcibly, 162 a †.
Where and what dammages and coſts are recoverable in a writ of Forcible entry, vide tit. Dammages.

¶ Forreſt, Park, Chaſe, and Warren.

The deſcription of a Forreſt, 233 a ¶.
The ſignification and derivation of the word Park, 233 a †.
What beaſts properly belong to the Forreſt, what to the Chaſe and Park, and what beaſts and fowls to the Warren, 233 a *.
The difference between a Chaſe and a Forreſt, ibid.
What act by a Keeper of a Park ſhall be a forfeiture of his office, 233 b *.
What ſhall be ſaid waſte in a Park, vide tit. Waſte.

¶ Forfeiture.

The ſignification and derivation of the word, 59 a *.
How many ſeveral ways a particular Tenant may forfeit his eſtate by alienation, and what act by him ſhal be ſaid a forfeiture of his eſtate, and what not, 251 a ¶ b per tot. pag. 252 a †.
Where the right of a particular eſtate may be forfeited, and he that hath but a right ſhall take advantage of it, 251 b † 252 a †.
Where by the forfeiture of a Leaſe for life, all mean charges and eſtates by him made ſhall be avoided by the Leſſor, and where not, 233 b ¶ 234 a † vide tit. Conditions.
Where Leſſee for life forfeit his eſtate by alienation, the forfeiture ſhall continue notwithſtanding the determination of the eſtate by limitation, or entry for condition broken 202 b * 252 a *.
Where Tenant for life and he in the remainder for life having the Fee expectant upon a remainder in tail joyn in a Feoffment, this ſhall be a forfeiture of both their eſtates to him in the remainder in tail, 302 b ¶.
Where Tenant for life make a Leaſe for his own life to his Leſſor, the remainder in fee to his Leſſor and a ſtranger, this ſhall enure as a forfeiture for one moity, and ſurrender for the other, vide tit. Surrender.
Where a recovery ſuffered by Tenant for life ſhould

The Table.

should be a forfeiture of his eſtate at the Common Law, and at this day, and where not, 356 a ¶ 362 a †. vide Stat. 14 Eliz. cap 8.

Where a Statute giveth a forfeiture generally againſt him that wrongeth the duty or intereſt of another, who ſhall have his forfeiture, 159 a *.

A Gardenſhip in Socage or by nature not forfeitable by Outlawry or Attainder, 84 b * 88 b ¶.

What lands, &c forfeitable by an Attainder in a Præmunire, and what not, vide tit. Præmunire.

What is forfeited by conviction of Felony before Attainder, vide tit Attainder.

Where a forfeiture ſhall relate to the time of the Felony committed, & where not, vide tit. Relation.

What ſhall be a forfeiture of a Coppy-hold Tenancy vide tit. Copy-hold.

What ſhall be a forfeiture of a Freehold Tenancy, 92 b ¶.

Forfeiture of Offices, vide tit. Office.

Forfeiture of Eſtates, vide tit. Condition.

Where a man hanged by Martial Law ſhall not forfeit his Lands, 13 a ¶.

¶ Forjudger.

THe legal acception of the word, 160 b *.

Where and for what cauſe the Tenant ſhall forjudge his meſne and where, and for what not, 100 a ¶ b †.

The form of the Judgment in a Forjudger, 100 a ¶.

What perſons ſhall be bound by a Forjudger, and what not, 100 a ¶ b †.

Where in writ of Meſne by two Joyntenants one is ſummoned and ſevered, the other ſhall not forjudge the Meſne, 100 a ¶.

Where in a writ of Meſne againſt two tenant Meſnes one make default, the Tenant ſhall not forjudge the other, 100 a ¶.

Vide Stat. W. 2 ca. 9 & tit. Meſne.

¶ Formedon.

FOrmedon, whence ſo called, 376 b *.

The ſeveral kinds of Formedons, and where, and by whom each Formedon lyeth, 316 b ¶.

Where a Formedon lyeth of a Coppy-hold, 60 a ¶ Vide tit. Coppy-hold.

What ſhall be ſaid a good plea in bar of a Formedon, and what not, Vide tit. Alienes, Fines, & Warranty.

Where the Diſcontinuee of Tenant in Tail make a Leaſe for life, and grant the reverſion to the Iſſue in Tail, the Iſſue is for ever barred of his Formedon, 297 b *.

Vide tit. Tail.

¶ Frankalmoign.

THe deſcription of a tenure by Frankalmoign, 93 b * 94 b †.

How ſuch Tenure was created at the firſt, and how it may be created at this day 93 b ¶ 99 a *.

Where a gift in Frealmoign ſhall be good without Deed, and where not, 94 b *.

Where the reſervation of a Rent upon ſuch gift ſhall be void, 97 a †.

What ſervices ſuch Tenant is bound to do, and what not, 95 a ¶ b †.

What remedy the Lord hath for ſuch ſervices, 95 b ¶ 96 a.

Where the Tenure in Freealmoign ſhall continue, notwithſtanding the alteration of Divine Services and Prayers, 95 b *.

Where ſuch Tenure cannot be of lands in ancient Demeſne, 97 a †.

Where ſuch Tenant ſhall not be charged with a Colody, ibidem.

Upon transferring the Seigniory or Tenancy in Frankalmoign, what ſervice ſhall be due to the Lord or Grantee, 98 a 99 b † *.

Of what ſervices the Lord is bound to acquit his Tenant in Frankalmoign, and of what not, 99 b ¶ 100 a *.

Where ſuch Lord ſhall not diſclaim in a writ of Meſne, 102 a * 306 b †.

Where a Confirmation by the Lord to his Tenant by Fealty, &c. to hold in Frankalmoign ſhall be good, Vide tit. Confirmation.

¶ Frankbanke quid, 110 b ¶.

¶ Frankmariage.

THe ſignification of the word 21 b *.

Whatedings incident to an Eſtate in Frankmariage, 21 b † * 219 b *.

The differences between a Donee in Frankmariage and in ſpecial tail, 21 b ¶ 22 a †.

What ſervice due by ſuch Donee to his Donor, 23 a ¶ 97 b.

Where a Rent may be given in Frankmariage, 21 b *.

The neceſſity of the word (Frankmariage) to the creation of the eſtate, 21 b ¶.

How the degrees in Frankmariage ſhall be computed, 23 b per tot. pag. vide tit. Degrees.

Where a gift in Frankmariage to the parties already married ſhall be good, 176 a *.

Where a remainder limited upon ſuch gift ſhall impeach the eſtate in Frankmariage, and where not, 21 b *.

A deviſe of lands in Frankmariage void, ibid.

A gift in Liberum Maritagium by Ceſtuy que uſe before 27 H. 8 no Frankmariage, ibid.

Where a Rent reſerved upon a gift in Frankmariage ſhall not take effect till the fourth degree paſt, ibid.

¶ Frafletum quid, 4 b *.

¶ Freehold.

THe ſignification of the word, and whence ſo called, 43 b *.

Where divers Freeholds may be derived out of one, and where not, 41 a †.

Where an incertain intereſt in Lands ſhall be deemed in Law a Freehold, and where not, 42 a * vide tit. Eſtates.

Where a man may have a Freehold in his own right, and a Chattel in anothers right ſimul & ſemel: but not e converſo, 54 b ¶ 338 b ¶.

Where the alteration of the Freehold ſhall be an alteration of the reverſion, 191 b 192 a b vide tit. Joyntenants.

Where a right of Freehold ſhall drown in a Chattel, 266 a †.

The deſcription of a Freehold in Law, 266 b †.

Upon what conveyances the Purchaſer ſhall be ſaid to have a Freehold in Law in him before Entry, and upon what not, 266 b † *.

Where a ſtranger by the acknowledgment of the Tenant in a Præcipe to be his villain ſhall be actually ſeiſed of the Freehold and inheritance without entry, 266 b *.

What actions are maintenable by and againſt him that hath only a Freehold in Law, and what not, 358 a ¶ b †.

Where a Freehold in lands may be defeated by a

b con-

The Table.

condition without Entry or Claim, and where not, 379 a † vide tit. Conditions.
Where the Freehold in lands shall be in Abeiance, vide tit. Abeiance.
To what purposes Tenants by Statute Merchant, Elegit, &c. are said to have a Freehold, and to what not, 43 b *.
Vide tit. Estates.

¶ Frustrum terræ quid 5 b †.

¶ Frythe quid 5 b ¶.

¶ Gardein.

The several sorts of Gardeins, 85 a †.
Who shall be Gardein of Inheritances, which lie not in Tenure during the minority of the Heir, 87 b * ¶.
To what purposes the Gardein shall be said possessed of his ward before entry or seisure, and to what not 88 a ¶ b †.
Where a writ of Dower lieth by the wife against the Gardein, and where against the heir within age, vide tit. Dower.
Where the Gardein shall have an Admeasurement of Dower against the Wife, and where not, vide tit. Admeasurement.
Where an Action of waste lieth against the Gardein, and the penalty in such Action, vide tit. Waste.
Gardein in Socage, vide tit. Socage.
Vide at large in tit. Marriage & Wardship.

¶ Gavilkind.

Gavilkind whence so called, and where such custom used, 140 a ¶ 175 b * ¶.
Where one brother dying without issue, all the brothers shall equally inherit by this custom, as well as sons, 140 a ¶.
Where by such custom the wife shall have power of the moity of her husbands lands, 111 a †.
Where by the same custom the husband shall be Tenant by the Curtesie without issue, ibid. vide tit. Curtesie of, &c.
A prescription in this Custom not good, 175 b *.

¶ Glyn quid 5 b ¶.

¶ Grange quid, and what shall pass by that name in a Grant, 5 a ¶.

¶ Grand Serjeantie, v. tit. Serjeantie.

¶ Grants.

The description of a Grant, 172 a †.
What things properly lie in Grant, and what in Livery, 9 b † 48 a † 85 a 232 a * 335 b *.
What things are grantable over, and what not, 82 a † 214 a ¶ 232 b † 260 a † vide tit. Annuity, & Assignment.
Where a thing in suspence may be granted over, and where not, 314 a *.
Where Grants shall receive construction according to the substance of the Deed, and not according to Grammatical sense, 146 b *.
Where the construction of Grants ought to ensue the intention of the parties, 313 a ¶ b † vide tit. Intention of, &c.
Where the words of a Grant shall be transposed in construction contrary to their order, 217 b †.
Where a Grant being impossible to take effect according to the letter, the Law shall make such construction, as by possibility may take effect, 183 b † vide tit. Possibility.
Where a Grant shall amount to a Release, Confirmation, Surrender, &c. and where not, 301 b * 302 a † 307 a ¶ 313 a ¶ b † vide tit. Confirmation.
Where the same words shall amount both to a Grant and confirmation of the same thing, vide tit. Confirmation.
Where by the Grant of a Manor without (cum pertinentiis) a Villain regardant, Advowson appendant, &c. shall pass, 307 a †.
What shall pass by the Grant of the services of Tenant in tail, and what not, 150 b † 152 a *.
Where a Grant of a Corody to two men and their heirs shall amount in Law to several grants, 189 a *.
Where two Tenants in Common joyn in the Grant of a Rent charge, it shall enure as several Grants, 197 a † 287 b * vid. tit. Rents.
What Grant shall be sufficient to charge the Land with a Rent, and what not, vide tit. Rents.
Where by the Grant of a reversion, rents and services shall pass, 151 b ¶ 152 a † 317 a * 324 a ¶ b ¶.
By the Grant of (Hæreditaments) what shall pass, 6 a † 16 a * ¶ 383 a ¶ b †.
Where by the Grant of Land a reversion shall pass, 324 b ¶.
Where Tenant in tail grant totum statum, what shall pass, 331 a * ¶ vide tit. Estates.
A man grant proximam advocat. to one, and before the Church void grant proximam advocat. to another, the second grant void, 378 b ¶.
A man grant 3. prestationem and die, his wife shall have the 3. and the Grantee the 4. 379 a †.
Where the Grantee named after the Habend. shall take by the Grant, and where not, vide tit. Habendum.
Where the grant of Patron and Ordinary shall charge the Church, vide tit. Annuity, & Parson.
What things may be granted without Deed, and what not, vide tit. Deeds.
Where a Grant, &c. shall be good, albeit the Grantor or Grantee be misnamed, vide tit. Name.
Where a Grant shall be good, albeit no mention is made of the proper name of the Grantor or Grantee, vide ibidem.
Where the Grant of a thing in abeiance shall be good, and where not, vide tit. Abeiance.

¶ Grava quid, 4 b ¶.

¶ Gurges quid, and what shall pass in a Grant by that name, 5 b †.

¶ Haga quid, 5 b * 56 b †.

¶ Habendum.

The office and force of the Habend'. in a Deed, 183 a ¶.
Where it shall be said repugnant in the grant of an estate tail, and where not, 21 a †.
Where one named after the Habend'. shall take by the gift, and where not, 78 † 21 a ¶ 26 b ¶ 378 b †.
Where the several limitations in the Habend'. shall destroy the joynt implication of the premisses, 183 b † 19 b †.

Where

The Table.

Where an Habeandum may inlarge the premises, but cannot abridge them, 299 a †.
Vide tit. Deeds.

¶ Hariot.

How called in the Saxon tongue, 185 b ¶.
From what antiquity due to Lords, ibidem.
Where a devise by the Tenant of all his goods shall not defeat the Lord of his Hariot, 185 b ¶.
Where by purchase of part of the Tenancy by the Lord, a Hariot shall be extinct, and where not, 149 b † * vide tit. Extinguishment.
Where a Hariot shall be paid before a Mortuary, 185 b ¶.

¶ Haugh & Hough quid 5 b ¶.

¶ Heir.

The Etymology and legal acception of the word (Heir) 7 b ¶ 237 b †
What issue and person may be an Heir, and what not, 7 b ¶ 8 a † ¶.
Hæres apparens quis, 8 a ¶.
Hæres altrarius quis, 8 b †.
Where and what Chattels the Heir shall have after the death of his Ancestor, and what not, 8 a ¶ 18 b * 185 b ¶ vide tit. Chattels.
Where the word (Heirs) shall be necessary to the creation of an estate of inheritance, and where not, 8 b ¶ 9 b 10 a † 20 a ¶ 21 b † 22 a * 47 a * 193 b † 322 b * 385 b *.
Where the word (Heirs) shall be good of it self, and where not without conjunction of the word (les) 8 b *.
The extent and latitude of the word (Heirs) 9 a †.
Heirs a good name of purchase, 26 b ¶.
Who shall be said the next Heir to take by purchase, and who to take by Discent, 10 b *.
Where the Heir to take by purchase ought to be a complete right Heir in judgment of Law, 24 b ¶ 26 b ¶ 164 a †
Where the Ancestor may make his right Heir a purchaser, and where not, 22 b ¶.
Where a Remainder is limited to the right Heirs of a particular Tenant, the Fee simple shall be said to vest in him presently, and where not, 22 b * 319 b † 376 b ¶.
Where the Heir surveying by Discent ought to make himself Heir to him which was last seised, 11 b * 15 a † 239 b †.
Where by the birth of an Heir more near the Discent to another shall be defeated, 11 b ¶.
Where the Heir of the part of the father shall inherit before the Heir of part of the mother, & è converso, 12 a & b 13 a † *.
The difference between an Heir in the Civil Law, and an Heir at the Common Law, 237 b †.
Where the sons of an Alien born within the ligeance of the King shall not be Heirs either to other. The same of the sons of a person attainted, secus if born before the Attainder, 8 a *.
Where and what Attainder shall disable the party attainted to inherit, or to have Heir, and where and what not, 8 a * vide tit. Attainder, & Corruption of bloud.
Where the Heir shall not be bound by the Obligation or warranty of his Ancestor without naming, 209 a * 382 b * 384 b * 386 a †.
Where the Heir shall not be charged in an annuity without naming, vide tit. Annuity.
Where a man bind his Heirs to warranty, or to pay a sum of money without naming himself, such lien shall be void, 386 a † vide tit. Warranty.
Where a reservation of Rent to the Heirs of the party without naming himself shall be good, and where not, vide tit. Reservation.
Where an action of debt shall lie against the special Heir without naming the Heir at the Common Law, secus of a Voucher by reason of a warranty, 376 b * 386 b * vide tit. Voucher.
A gift to a man his Heirs and Successors, how it shall enure, 9 a †.
Where the Heir shall be in by Discent of an estate that by possibility could not be in his Ancestor, vide tit. Discent.
Where the Heir shall enter and have an action of Waste upon a Disseisin or waste done in the life of his Ancestor, which the Ancestor himself could not, vide tit. Entry Congeable, & Waste.
Where the Heir shall have an Appeal of the death of his Ancestor, where the party by whom he conveys his Discent could not by possibility, vide tit. Appeal.
Where a person attainted hath issue, and after pardon hath issue, the youngest no Heir living, the eldest of his issues, vide tit. Attainder.
Where the Heir shall have an action for defacing the Monument of his Ancestor, 18 b *.

¶ Heireloome quid 18 b * A devise of Heirloomes void, 185 b ¶.

¶ Herbage.

What shall pass by the grant of the Herbage of land, 4 b †.
Where the owners acceptance of a Lease of the Herbage of his Land by Indenture shall be no Estoppel as to the Land, 47 b *.
Where a reservation of Rent out of the Herbage of Land shall be good, 142 a *.
Where a grant of the Herbage or pasture of the Land by one Joyntenant, shall bind his companion surviving, vide tit. Joyntenants.

¶ Heresie.

A Tearnder of Heresie no corruption of bloud, or forfeiture of lands, 391 a ¶ vide tit. Attainder.

¶ Hida terræ quid, 69 a *.

¶ Hirst & Hurst quid 4 b ¶.

¶ Holm & Hulmus quid, 5 a *.

¶ Holt quid 4 b ¶.

¶ Homage.

The Etymology of the word, 64 b *.
The division of Homage, 6 b †.
The manner of doing Homage, 42 ¶.
In what respects it is said to be the most honourable and humble service, 65 a †.
The league between such Lord and Tenant, 65 a * 100 b ¶.
Where in doing Homage, Homage due to the King

The Table.

ought to be excepted, and the penalty for omitting it, 64 b † 65 a ¶ b ‖.

What person may do and take Homage, and what not, 65 b 66 b ¶ 67 a ‖ b 68 a * 341 b †.

The form of Homage by an Abbot, or other Ecclesiastical person, 65 b ¶.

The form of Homage by a woman sole, 66 a †.

The form of Homage by husband and wife joyntly, 66 a * ¶.

Where and what Corporation may do and take Homage, and where and what not, 65 b ¶ 66 b ¶ 67 a † 341 b †.

Where the husband shall do and take Homage alone, and where joyntly with his wife, 30 a * 67 a

Where there are divers Tenants of the same Land, where all, and where but one shall do Homage, 67 a ¶ b †.

Where and why the tenant shall not be sworn in doing Homage, 68 a †.

Where Homage done to one joynt Lord shall excuse against the other, 67 b *.

The benefit which accrues to Lords by receiving Homage, 68 a ¶ 92 b.

Where the tenant notwithstanding Homage once done to the Lord, shall be compelled to do Homage again to his heir, and where not, 103 b * ¶.

Where the tenant upon translation of the seigniory to another shall be compelled to do Homage again, and where not, 104 a & b.

Where after refusal the Lord shall not distrain his tenant for Homage until request, 105 a.

By what means fealty may be separated from Homage, and by what not, 150 b ¶ 151 a ¶ vide tit. Fealty.

The writ of Homagio capiendo, and where it lyeth, 101 a *.

¶ Homage Auncestrel.

The description of Tenure by Homage Auncestrel, 100 b *.

Blood on the Lords side not always requisite to such tenure, 100 b ¶ 102 b *.

Where such tenure draweth to it warranty, and acquital, 101 a † * 384 a ¶.

What shall be a good counterplea to a warranty by cause of Homage Auncestrel, 101 a *

What lands the tenant shall recover in value upon such warranty, 102 a * vide tit. Recovery in value, & Warranty.

The reciprocal tie of reverence and protection between such Lord and tenant, 100 b ¶.

Where such tenant shall be compelled to attorn to the grantee of his Lord, and where not, 101 a * vide tit. Attornment, & Per quæ servitia.

Where the Lord by Homage Auncestrel may disclaim in the seigniory, and where not, 101 b 102 a *.

Where a man may hold by Homage Auncestrel of a body politick, but not e converso, 102 b ¶.

Where such tenure shall remain notwithstanding the alteration of the name and nature of the corporation, and where not, 102 b ¶.

Where an Abbot, Bishop, &c. shall not disclaim in a seigniory by Hom. Ancest. 101 b * 103 a †.

After alienation by the tenant by Hom. Ancest. what service shall be due to the Lord, 103 a *.

What act by the tenant shall be an interruption of the privity between him and his Lord, and what not, 103 a * ¶ 208 b †.

Where such tenure may belong to Knights service, 105 a ¶.

¶ Hope quid, 5 b ¶.

¶ Horngeld quid, 107 a †.

¶ Hors de son fee.

Where such plea shall be good by the tenant upon a distress, and avowry by a stranger who claims the seigniory, and where not, 1 b ¶.

¶ Hospital.

The divers kinds of Hospitals, 342 a *.

What Hospitals were given to the Crown by the stat. of 27 H. 8 31 H. 8 37 H. 8 and 1 E. 6 and what not, 342 a *.

¶ Howe & Hoo quid, 5 b ¶.

Jampna quid, 5 a †.

¶ Ideot.

Who properly said to be an Ideot, 247 a †.

Where an Ideot shall be bound by a descent, 247 a † vide tit. Entry Congeable.

By what means a feoffement, &c. by an Ideot may be avoided during his life, and by what not, 247 a ¶ b †.

Where a stranger may tender money in performance of a condition to save the estate of an Ideot without his consent, 206 b ¶ vide tit. Condition, & Morgage.

Where an Ideot ought to sue in proper person and not by Gardian or Attorney, 135 b ¶.

Vide tit. Puis non compos mentis.

¶ Imprisonment.

Imprisonment a good cause to avoid a descent, vide tit. Entry Congeable.

A good cause to reverse an Outlawry, 259 b †.

Where it shall save a default, 259 b *.

Where and how a man in prison may be proceeded against by suits and procels of Law, 260 a *.

How a man in prison ought to be ordered and used, 260 a *.

A president where after judgment in an Appeal against a woman her imprisonment was respited by reason of pregnancy, 289 a ¶.

A president where after judgment in a trespass quare vi, &c. against an infant, he was excused of imprisonment by reason of his age, ibidem.

¶ Incident vide tit. Appendant.

¶ Incumbent, vide tit. Parson & Quare impedit.

The Etymology of the word, 119 b ¶.

¶ Indite-

The Table.

¶ Inditement.

The ſignification and derivation of the word, 126 b*.

¶ What certainty requiſite in an Inditement, 303 a *, vide tit. Pleadings.

¶ Where the inditement ſhall ſay (felonice) albeit the offence be no felony, 127 a*.

¶ Where upon attainder in an inditement the forfeiture ſhall relate to the felony committed, ſecus in an Appeal, vide tit. Felony.

The difference between an appeal, and an inditement, 128 b*.

Vide tit. Appeal.

¶ Infant.

Where an infant may be a purchaſer, 2 b ¶.

Where he may endow his wife, and where not, vide tit. Dower.

¶ Where aſſignment of dower by the heir being an Infant ſhall be good, and where not, 35 a* vide tit. Dower.

Where an exchange by an infant ſhall be good, and where voidable, vide tit. Exchange.

¶ Where by cuſtom at fifteen he may make a leaſe, 47 b†.

¶ Where and for what things the deed or obligation of an infant ſhall bind him, and where and for what not, 171 b ¶ 172 a*.

Where and within what time a fine levyed by an Infant may be avoyded, and where it may be reverſed by his heir after his death, and where not, 131 a *380 b*.

Where the breach of a condition in Law ſhall be a forfeiture of the office, or eſtate of an infant, and where not, 233 b ¶.

Where laches in an infant ſhall be prejudicial to him, and where not, 246 a † b † * 380 b ¶.

Where a feme covert ſhall be prejudiced by laches, where an infant ſhall not, 146 b * vide ſtat. Merton, cap. 7.

¶ Where and at what age the act or wrong of an infant in criminal matters ſhall be imputed to him, and where, and at whatnot, 247 b†.

¶ Where a Leaſe for years made by an infant ſhall be good, 308 a*.

Where the releaſe of a debt by an infant ſhall be good, and where not 264 b ¶.

What things are avoidable by an infant after his full age, and what only during his nonage, 380 a* b*.

¶ Where an action of waſt or Ceſſavit lyeth againſt an Infant, 380 b ¶ 381 a†.

Where an infant ſhall be compelled to attorn in a Quid juris clamat, or Per quæ ſervitia, 319 a ¶.

Where a deſcent ſhall toll the entry of an Infant, and where not, vide tit. Entry Conſimable.

Where an Infant ſhall be bound by a warranty deſcending during his infancy, and where not, Vide tit. Warranty.

¶ Where the dying ſeiſed of a baſtard without interruption ſhall bar the mulier being an infant, vide tit. Baſtardy.

Where an uſurpation upon an infant ſhall put him out of poſſeſſion of the advowſon. 344 b†.

By what acts an Infant in ventre ſa mere ſhall be bound, and by what not. 100 b† 244 a* 245 b ¶.

An Infant not capable of the ſtewardſhip of a Court 3 b*.

Not capable to perform grand ſerieanty at the Coronation, 107 b ¶.

Not capable to be of an Enqueſt, 157 a ¶ 172 b†

Where an Infant ſhall not be amerced for a non-ſuit or default, 127 a†.

Where upon a iudgment againſt him quod capiatur he ſhall not be impriſoned, 289 a ¶.

¶ Where an execution by Elegit, ſtat. merchant, &c. ſhal not be ſued againſt the heir during his infancy, vide tit. Execution.

¶ Where an Infant ſhall not be charged in an accompt, 171 b ¶ vide tit. Accompt.

Where an Infant may do Homage, but not Fealty, 65 b*.

Where an Infant ought to ſue by Prochein amy, and defend by Gardian, 135 b ¶.

Where a ſtranger, and where the ſpecial heir ſhall take advantage of the infancy of his Anceſtor, 336 b ¶ 337 b†*.

Vide tit. Coverture.

¶ Infranchiſement, Vide tit. Manumiſſion.

The derivation and ſeveral acceptions of the word, 137 b†.

¶ Inheritance.

The extent and ſignification of the word, and what ſhall paſs by the grant of inheritances, 6 a† 16 a *¶ 383 a ¶ b†.

The ſeveral ſorts of inheritances, 1 b ¶ 9 a ¶ 49 a† 164 b*.

Where a man may have an Inheritance moveable in lands, and how ſuch inheritance may be alienid and charged, 44 a* 48 b † vide tit. Charge.

Where an inheritance ſhall alterid, and where not, 11 a*.

New inheritances reiected in Law, 13 a† 27 a ¶ 377 b ¶ 379 b†.

The ancient courſe of inheritances not alterable but by Parliament, 278 a ¶.

¶ Where an eſtate of inheritance ſhall paſs without the word (Heirs) and where not, vide tit. Heirs.

Where a man ſhall inherit where he by whom he conveyeth cannot by poſſibility, & è converſo, 25 a* ¶

The bloud only of the firſt purchaſor inheritable to Lands, 12 a*.

Vide tit. Heirs and Fee-ſimple.

¶ Inrollments.

Where Inrolments ought always to be in parchment, 35 b ¶.

¶ Where an Inrolment ſhall not be pleadable without ſhewing the original Deed, 225 b*.

Vide tit. Deeds.

¶ Inſtant.

The definition of an Inſtant, 185 b†.

¶ Where the Law allowerh priority of time in an inſtant, 185 b†*.

Where a fee ſhall be develled and deſt in one perſon in an Inſtant, 297 b ¶.

Where a remainder veſting in an inſtant ſhall be good, vide tit. Remainder.

¶ Intention of the parties.

Where the conſtruction of acts ſhall enſue the intention of the parties, and where not, 214 b† vide tit. Grants.

Where the intention of the parties ſhall operate in the raiſing and direction of uſes. 49 a†.

Where the entry of him that right hath into Land ſhall be guided by his intent, 49 b ¶.

Where a man hath two ways to paſs lands, and he intendeth to paſs them by one of the ways, yet it ſhall paſs by the other, and where not, 49 a†.

The Table.

¶ Intereſt.

The extent and ſignification of the word, 345 b ¶ What paſſeth by the grant of totum intereſſe, ibid. Vide tit. Eſtates.

¶ Intruſion.

What properly ſaid to be an intruſion, and how it differeth from abatement, diſſeiſin, &c. 277 a ¶ b †.

¶ Joyntenants.

JOyntenants, whence ſo called, and how they differ from Parceners, 180 b †.
What things may ſtand in joynture one with the other, and what not, 188 a per tot. pag. 192 b ¶.
Where the parties ſhall be joyntenants notwithſtanding the ſeveral and different limitations of each of them, 180 b †.
Where there may be a Joyntenancy albeit no ſurviv'orſhip, 181 a ¶ b †.
Where Chattels or debts in joyntenancy ſhall ſurvive, and where not, 181 b ¶ 182 a † *.
Where Joyntenancy may be albeit the eſtates veſt in them at ſeveral times, and where not, 188 a ¶.
Where two may have joynt eſtates for their lives, and ſeveral inheritances, or the inheritance to one of them, 182 a ¶ b 183 a 184 a † * 189 b *.
To what purpoſes ſuch inheritance ſhall be ſaid to be executed in the life of the parties, and to what not, 182 b * 183 a 184 * a ¶ b †.
Where and by what acts an eſtate in joynture may be ſevered, and where and by what not, 182 a per tot. pag. 183 a † 190 a ¶.
Where two may be joyntenants of the freehold and fee-ſimple, and tenants in common of an eſtate tail in the ſame land, 183 b ¶.
Where the joyntenant ſurviving ſhall be lyable to the charges of his Companion, and where not, 184 b per tot. pag. 185 a † *.
Where the charges of one joyntenant avoidable by his companion, ſhall be good againſt himſelf ſurviving, 184 b *.
Where upon a recovery againſt one joyntenant execution ſhall be ſued againſt his companion, 185 a †.
Where an eſtoppel to one joyntenant ſhall not bind his companion ſurviving, ibidem.
Where a deviſe by one joyntenant ſhall be void againſt his companion, 185 a ¶ b †.
Where by the death of the wife joyntenant with a ſtranger for years, the term ſhall ſurvive to the other joyntenant, and not to the husband, 185 b *.
Where a diſparagment of the heir by one joyntenant ſhall be forfeiture of the ward as to both, 80 b ¶.
Where one joyntenant of a ward ſhall be liable to the waſt done by his companion, 54 a †.
Where an aſſignment of power by one joyntenant ſhall be good againſt his companion, 35 a †.
Where upon grant of a rent to two, the election of one to have it as an annuity or a rent ſhall bind his companion, 146 a † vide tit. Election.
Where a Reſcuous by one Joyntenant ſhall make his companion a diſſeiſor, 161 b †.
Where one Joyntenant ſhall have an account againſt his companion, and where not, vide tit. Accompt.
Where each Joyntenant ſhall be ſaid to be ſeiſed per my & per tout, and to what purpoſes either hath right but to a moity, 186 a † * 350 a ¶.
Where a leaſe for years by one joyntenant for life or in fee to begin after his death ſhall be good againſt the ſurvivor, and where not, 184 b ¶ 185 b † 186 a ¶ b †.
Where a grant of the Herbage or veſture of the land by one joyntenant ſhall bind the ſurvivor, 186 b †.
Where a preſentation to a Church by one Joyntenant ſhall not put his companion out of poſſeſſion, 186 b * vide tit. Preſentation.
Where partition between joyntenants ſhall be good without deed, and where not, 169 a * 187 a † * vide ſtat. 32 H. 8 cap. 32.
Whether in an Aſſiſe by one joyntenant againſt his companion judgment ought to be given in ſeveralty, vide tit. Judgment.
Where by partition between Joyntenants a warranty ſhall be deſtroyed, and where not, 187 a *.
Where husband and wife ſhall be joyntenants and where by entierties and where by moities, 187 a ¶ b per tot. pag.
Where baron and feme and a ſtranger are Joyntenants the ſole alienation of the baron ſhall bar the ſtranger ſurviving as to a moity, and where not, 187 b ¶ 188 a † 327 b ¶.
Where one Joyntenant or Parcener enter or recover the whole eſtate being put to a right, the other ſhall enter and occupy with him, and where not, 188 a ¶ 394 b † *.
Where a Leaſe of part of the term by one Joyntenant for years ſhall be a ſeverance of the joynture as to the whole, 192 a * 199 a †.
Where a ſeverance of the Joynture of the freehold ſhall be a ſeverance of the reverſion, 191 b 192 a b.
Where a rent reſerved to one Joyntenant ſhall enure to both, vide tit. Reſervation.
Where a ſurrender to one Joyntenant ſhall enure to both, vide tit. Surrender.
Where a reſervation of the reverſion to one joyntenant by deed indented upon a leaſe by both ſhall not eſtopp the other, 192 a ¶.
Where a Leaſe is made by two joyntenants the remainder in fee to one of them, this ſhall be a good remainder for a moity, 192 b †.
Where one joyntenant make a leaſe for his own life and dyeth no ſurvivor, quære, 193 a *.
Where a releaſe by one Joyntenant to his companion ſhall be good, and where not, and how ſuch releaſe ſhall enure, vide tit. Releaſes.
Where a releaſe by a ſtranger to one joyntenant ſhall enure to his companion, and where not, vide tit. Releaſes.
Where one Joyntenant ſhall have an action of waſt againſt his companion, and where not, vide tit. Waſt. & ſtat. W. 2. cap. 22.
Where the feoffment of one joyntenant to his companion and a ſtranger ſhall be good only to the ſtranger, 335 a *.
Where two Infants joyntenants make a feoffment, by the death of one his right ſhall ſurvive, ſecus of a feoffment by one ſolely, 337 a ¶ b † vide tit. Entry Congeable, & Dum fuit infra ætat.
Where a remitter to Joyntenant ſhall be a remitter to his companion, and where not, vide tit. Remitter.
Where an Attornment to one Joyntenant ſhall be good to his companion, vide tit. Attornment.
Where two Joyntenants the one within age and the other of full age be diſſeiſed and a deſcent caſt, and he of full age die, the entry of the other joyntenant ſhall be congeable into the whole, vide tit. Entry Congeable.
Where the father Joyntenant with his ſon and a ſtranger make a feoffment of the whole with warranty

The Table.

ranty, the ſtranger ſurviving ſhall avoid the whole, 367 a † vide tit. Warranty.

Where two are joyntly bound in an obligation and one dye, the charge ſhall ſurvive to the other, ſecus of a warranty, vide tit. Charge.

¶ Joynture.

What ſhall be a good Joynture within the ſtatute of 27 H. 8 and what not, 36 b † *.

Where the wife may wave her Joynture and where not, 36 b ¶.

Vid. at large in tit. Dower. Vide ſtat. 11 H. 7 cap. 20.

Of diſcontinuance of Joyntures, and the expoſition of the ſeveral parts of that ſtatute.

¶ Ireland.

HOw and when the Laws of England were firſt eſtabliſhed in Ireland, and how afterwards confirmed, and by whom, 141 a ¶ b † *.

¶ Iſſue.

AN Iſſue what, and the ſeveral kinds of iſſues, 126 a †.

Where an iſſue generally taken ſhall refer to the Count, and not to the writ. 126 a *.

Iſſue upon a negative pregnant not good, 126 a *.

Where two affirmatives ſhall make an iſſue, and where not. 126 a *.

Where an iſſue ſhall be good upon a matter affirmative and negative albeit it be not in expreſs words, ibid.

The form of the entries of iſſues of the part of the plaintiff, and on part of the defendant, ibidem.

What pleas are iſſues themſelves whereto the plaintiff or defendant cannot reply, 126 a *.

Where (modo & forma) ſhall be of the ſubſtance of the iſſue and where but matter of form, 281 b per tot. pag.

Where the ſubſtance of the iſſue being found the verdict ſhall be ſufficient notwithſtanding omiſſion of circumſtances, 227 a ¶ 282 a † *.

Where the plea of the party amount to a generall iſſue, the general iſſue ſhall be entred, 303 b *.

Vide tit. Pleadings & verdict.

¶ Judgment.

THe ſignification and derivation of the word, 39 a ¶ 168 a ¶.

The ſeverall ſorts of iudgments, ibidem.

Where in a real action by one joyntenant or Parcener againſt another, iudgment ſhall not be given in ſeverality, 167 b * 187 a *.

The ſeveral iudgments in a writ of Partition and upon which of them a writ of Error lyeth, vide tit. Error, & Partition.

In what actions iudgment final ſhall be given, 294 b †.

The form of the iudgment, when it is for the tenant or defendant in a plea in bar or to the writ, 363 a †.

How and by what means every caſe iudicially depending ſhall receive end, 71 b ¶ 72 a †.

¶ Jugum terræ quid, 5 a ¶.

¶ Juncaria & Joncaria quid, and what ſhall paſs by that name, 5 a †.

¶ Juris utrum, vide tit. Parſon.

¶ Juror.

THe properties of a Juror, 155 a ¶ b †.

What perſon may be a Juror, and what not, 156 b ¶ 157 a ¶ 172 b †.

What crime ſhall diſable a man to be Juror, and what not, vide tit. Challenge, ſtat. W. 2 cap. 38 Artic. ſup. Chart. cap 9.

Upon what trials a Juror ought to have lands, &c. to the value of 40 s. vide ſtat. 2 tit 5 cap. 3.

Where a Ceſtuy que uſe ſhall be a ſufficient Juror within that ſtat. 272 b †.

Where tenant pur aut. vy, or the husband ſeiſed in his wives right be returned on a Jury after the death of the wife or Ceſtuy que vy, they may be challenged, ibid.

Where a witneſs ſhall be had in equal reſpect with a Juror and where not. 6 a † *.

Vide at large in tit. Challenge and Verdict.

¶ Juſtices.

BY what names anciently called, 168 b *.

Juſtices of Aſſiſe whence ſo called, 263 a *.

Their office and iuriſdiction, ibidem.

In what caſes anciently Juſtices of Niſi prius might give iudgment, and in what not, 267 a *.

The names of diuers Biſhops and Clergy men that were anciently Juſtices of the Kings Courts, 304 b †.

Juſtices in Eire, and their authority, vide tit. Eire.

¶ King.

THe Etymology of the word (King) and how called in other languages, 65 b †.

The ſtile of every King of England ſince the Conqueſt, 7 a ¶ b

The ſeveral compellations of diuers Kings of England, 7 a *.

The ſeveral Counſels of the King, 110 a *.

Vide at large in tit. Prærogative.

¶ Knight.

THe derivation of the word, and how called in other languages, 74, b * ¶.

The dignity of a Knight, 107 b *.

What ſhall be ſaid a Knights fee or Cenſus militaris, 69 a † * 83 b †.

¶ Knights ſervice.

THe deſcription of Knights ſervice, 74 b †.

By what names ſuch ſervice is diſtinguiſhed in law, 74 b ¶ 75 a † * b † 108 a †.

To what end this ſervice was created, 75 b † ¶.

The reſpect which the law hath to the ſuppoſitions of this ſervice, 39 a ¶ b ¶.

The Table.

The priviledges of tenants by Knights ſervice, 75 a*.

At what age the tenant ſhall be intended able to perform this ſervice, 74 b* 75 b † 78 b †.

What things incident to this tenure, and from what antiquity, 76 a † b † 305 b ¶.

For what cauſe the law gave the ward and marriage of the heir of ſuch tenant to his Lord, 75 b †* 76 a*.

Where the tenure ceaſing the wardſhip and all other incidents ſhall alſo ceaſe, 76 a † b * ¶ 248 a ¶.

Where the fruits of Knights ſervice being ſuſpended the tenancy being in a corporation, ſhall be revived again in the hands of a natural perſon, 70 b * 99 a †.

Where a tenure may be Knights ſervice and no eſcuage, 82 b ¶.

Where tenure by Caſtlegard ſhall be Knights ſervice, and where not, 82 b ¶ 83 a ¶ 87 a ¶.

Where the tenure ſhall remain albeit the Caſtle be ruined, 83 a *.

Vide tit. Mariage, & Wardſhip.

¶ Knol quid, 5 b ¶.

¶ Laches.

The ſignification of the word, 246 b † 380 b ¶.

Where laches ſhall be accounted in infants and femes covert, and where not, vide tit. Coverture & Infant.

No laches imputed to the King, vide tit. Prerogative.

Where the laches of the husband ſhall be preiudicial to his wife, and where not, vide tit. Baron & Feme.

What perſons ſhall be bound by laches of claim after a fine levyed at the Common Law and at this day, and what not, vide tit. Fines.

Where laches ſhall be imputed to a man beyond ſea, and where not, 260 b * vide tit. Entry congeable.

Where Laches ſhall be adiudged in a non compos mentis, and where not, vide tit. Dum non compos, &c. & Idcot.

¶ Lageman quid, 58 a ¶.

¶ Lannemanni qui, 5 a*.

¶ Laps, vide tit. Quare impedit.

¶ Law.

The ſeveral Laws uſed within this Kingdom, 11 b †*.

The diviſion of the Law of England, 110 b † 115 b*. 344 a*.

The ſeveral names whereby the Common Law of England is called, 142 a ¶.

How the Common Law and the Law of the Crown differ, 15 b * ¶.

The Law ſpiritual what, 344 a ¶.

Intendment of Law what, 78 b †.

No proof to be admitted againſt the preſumption of Law, 373 a ¶ b †.

What things the Law moſt favoureth, 124 b ¶.

How the Law reſpects the order of nature, 92 a † 197 b †.

The ancient rules and courſe of the Law not to be innovated, 281 b*.

The commendation of the Law of England, 97 b ¶.

The delight and faculty of the ſtudy of the Law, 71 a ¶.

Admonitions and directions concerning the ſtudy and practiſe of the Law, 70 a ¶ b † 249 b ¶.

¶ Lea & ley quid, 4 b ¶.

¶ Leaſes.

The derivation of the word (Leaſe) 43 b ¶.

The ſeveral kinds of leaſes, 45 a ¶ b †.

What ſhall be ſufficient words of leaſe, 45 b * 301 b ¶.

What perſons may make Leaſes at this day which could not by the Common Law, & è converſo, 44 b*.

What things requiſite to the perfection of a leaſe within the ſtat. 32 H. 8 44 a ¶ b † * vide ſtat. 32 H. 8 cap. 28.

What leaſes ſhall be good within the ſtatutes of 1 & 13 Eliz. and what not, 44 b ¶ 45 a*.

Where a concurrent Leaſe ſhall be good within thoſe ſtatutes, and where not, 45 a †.

What ſhall be ſaid a ſufficient certainty whereupon a leaſe for years may depend, and what not, 45 b ¶.

Where a leaſe for years may ceaſe and revive again, as to ſeveral perſons, and where not, 46 a* ¶.

To what purpoſes the party ſhall be ſaid a leſſee for years before entry, and to what not, 46 b † 51 b ¶ 270 a * b †.

Where a leaſe is made to have from the date, or day of the date, or from the making or from hencefoorth, &c. where it ſhall be ſaid to have beginning, 46 b ¶.

Where the deed hath no date or beareth an impoſſible date, when the leaſe ſhall be ſaid to have commencement, ibid.

Where the deed referreth to a void Leaſe or miſrecite a Leaſe in eſſe to have from the ending of that Leaſe, when it ſhall begin, 46 b ¶.

The ſignification of the word (term) and the difference inter terminum annorum, & tempus annorum, 45 b*.

Where a leaſe to the party generally, ſhall be conſtrued to be for the life of the leſſor, and where for the life of the leſſee, 42 a ¶ 183 a ¶ b †.

Where divers perſons ioyn in a leaſe, whoſe leaſe it ſhall be conſtrued, 45 a * ¶ vide tit. Confirmation.

Where a leaſe for years by tenant in tail ſhall be void by his death without iſſue, 45 b †.

Where a leaſe by a Parſon, Vicar, &c before the ſtat. was void by his death and where but voidable, 45 b *.

¶ Lectures.

The qualities of Lectures anciently, and how they differ from our Readings at this day, 280 a ¶ b †*

¶ Leiwes & Leſues, quid, 4 b ¶.

¶ Librata terræ quid, and what ſhall paſs by that name, 5 b ¶.

¶ Licence, vide tit. Authority.

¶ Ligeance.

The definition of Ligeance, 129 a*.

The diviſion and ſeveral ſorts of ligeance, 129 a ¶

Vide tit. Alien & Denizen.

¶ Limi-

The Table.

¶ Limitation.

What shall be said good words of limitation in grants &c. and the several sorts of them, 234 b ¶ 235 a †.

The nature of limitation in actions anciently, and at this day, vide tit. Time.

¶ Livery out of the hands of the King.

Where the heir of the Tenant of the King shall sue livery, and where an Ouster le maine, 79 a *.

Where the king shall have the mean profits until livery or Ouster le maine sued by the heir, and where not, ibidem.

The several kinds of livery, and which shall be the best and most safe for the heir, 77 a ¶.

Where by the livery of a mano: an Advowson appendant shall pass from the King, without special mention, 77 a ¶.

Vide tit. Primer Seisin.

¶ Livery and Seisin.

The description of Livery of Seisin 48 a †.

The several kinds of livery, ibid.

The antiquity of livery, 49 b *.

To the passing of what estates livery requisite, and of what not, 48 a † 216 a.

What act or words by the lessor or feoffor shall be said a good livery indeed, and what not, 48 a * ¶ 49 b * 56 b * 57 a †.

Where a livery expelling one estate referreth to a Charter expelling another, or which is void, how it shall be construed, 48 a ¶ b † 222 b ¶.

Where a livery referreth to two several Charters of different limitations, how it shall be construed, 21 a *.

Where livery of the one parcel shall be a livery of the other, and where to one feoffee good to the other, and where not, 48 a ¶ 50 a † 253 a † 259 a ¶.

How livery shall be made to pass a moveable inheritance, 48 b †.

Livery in law or within the view what, 48 b *.

Where such livery shall be good, and where not, ibidem 253 a ¶.

Such livery by an Attorney void, 52 b *.

Such livery not good but to him which takes the freehold, 49 b *.

Where a claim shall amount to an entry to perfect a livery within view, and where not, 48 b *.

Where livery shall be made of an upper Chamber, ibid. m.

What things properly lie in grant and what in livery, 49 a † Vide tit. Grants.

Where a freehold in lands shall pass at the Common law without livery, and where not, 49 a † 50 a ¶ b †.

Where livery made another being in possession shall be good, and where not, 48 b ¶ 369 b *.

In what respects a conveyance by livery said to exceed all others, 49 a *.

Where a Charter of feoffment by a disseisee, and a letter of Attorney to enter and make livery shall be a good feoffment after livery made, secus of a lease for years by deed, and an entry after, 48 b ¶.

Where livery shall be made to a lessee for years, 49 a ¶.

Where livery to one feoffee in the name of the other shall be good to both, and where not, 49 b † 359 a ¶.

Where livery to one Joyntenant lessee for years shall be sufficient to pass the freehold to him in the remainder, 49 b †.

What person may be an Attorney to deliver seisin 52 a † *.

Where and when the authority of an Attorney shall be said to be pursued, and where and when not, 52 a * ¶ 258 a ¶ vide tit. Authority.

Where the making of livery shall prejudice the title or interest of the Attorney as to the land, and where not, 52 a ¶.

Where a letter of Attorney may be contained in a deed of feoffment, and where not, 52 b *.

Where livery made after the death of the feoffor shall be good, and where not, 52 a † b * ¶.

Livery not good to expect in futuro, 217 a ¶.

Where the Charter is absolute, and livery upon condition, upon which the estate shall operate, 222 b *.

Where after an agreement of a feoffment to be made upon condition, livery is made absolute, how it shall be construed, 222 b ¶.

Where livery relateth to a deed made and dated in a forrein Kingdom, what shall operate thereby, 229 a †.

Vide tit. Feoffments.

¶ Maihem.

The signification and derivation of the word, 126 a ¶ b † 288 a ¶.

The nature and degree of the offence, 127 a ¶.

Where the writ shall say (felonice) albeit the offence be no felony, 127 a *.

The punishment anciently in an appeal of Mayhem, and at this day, 127 a *.

A release of actions personal a good plea in Maihem 288 a ¶.

Where a man was indicted for maiming himself, 127 b †.

Machecollare, & Machecollare quid, 5 a *.

¶ Maintenance.

The signification & derivation of the word, 368 b ¶.

The several kinds of maintenance, and how punishable, 368 b ¶ 369 a †.

Where an action of Maintenance lyeth for labouring the Jury, albeit they give no verdict, or pass against the plaintiff, 369 a †.

Against what persons a feoffment for maintenance was void by the Statute, 1 R. 2. and against what not, vide Stat. 1 R. 2 cap 9.

Vide Stat. 32 H. 8 cap. 9 made in suppression of Maintenance, and the exposition of the several parts of that Statute.

¶ Maior and Communalty, vide tit. Corporation.

¶ Manor.

The description of a Manor, and whence so called, 58 a ¶.

How Manors began at first, 58 b †.

Of what things a Manor may consist, 58 a ¶.

The office and duty of the Lord of a Manor, 59 b *.

The office and duty of a Steward of a manor, vide tit. Steward.

Where a court Baron holden out of the limits of the manor shall be good, and where void, 58 a *.

Where and what things shall pass by the grant of a manor without (cum pertinentiis) and where and what not, 121 b † vide tit. Grants and Prærogative.

The Table.

Where a rent seck may be parcel of a manor, secus of a rent charge, 150 b * 153 a *.
Where a reversion upon an estate tail shall be parcel of a manor, and pass by grant of the manor, 324 b ¶.
Where upon a lease of a manor except parcel, the part excepted shall continue parcel of the manor, and where not, 324 b ¶ 325 a †
Where upon tryal of a fact supposed within a manor the vesne, shall come out of the manor, and where out of the town, 125 b. † Vide tit. Trial.

¶ Manumission.

The signification and derivation of the word, 137 a ¶.
The several kinds of Manumission, 137 b †.
By the manumission of a villain cum tota sequela, what persons are infranchised, 3 a ¶.
Where and what actions brought by the Lord against his villain shall be an infranchisement to the villain and where and what not, 127 b ¶ 138 a ¶ b 136 b *.
Where the answer of the Lord to the action of the villain shall be an infranchisement to the villain, and where not, 125 a 138 b *.
The solemnity of manumissions anciently, 137 b *.
What estate or gift from the Lord to his villain shall be an infranchisement to him, and what not, 137 b ¶ 128 a.
Where a word release, or an attornment by the Lord to his villain shall be no infranchisement, 138 a *.
Where the Appeal of the Lord against his villain for felony being found against him shall be an infranchisement to the villain, and where not, 138 b 139 b *.
Where a neife marrying a free man shall be infranchised, and for what time, 123 a * 136 b † 137 b *.
Vide tit. Villain.

¶ Marches quid, 106 b ¶.

¶ Marchet quid, 137 b † 140 a *.

¶ Maremium quid, & unde, 58 a ¶.

¶ Mariage.

Maritagium quid & quotuplex, 21 b * 76 a *.
Of what respect in the law, 9 b ¶.
What mariage at this day shall be said consonant to Ecclesiastical rights, and what not, vide Stat. 32 H. 8 cap. 38.
Where the mariage of Ecclesiastical persons formerly was void, and where but voidable, 136 a *.
Where the Father shall have the custody, and mariage of his son or daughter, and where not, 84 a * ¶ b * 88 b ¶.
Wherefore the law gave the mariages of heirs females to the Lord by Knights service, 78 b *.
Where the Lord shall have two years to make a tender of mariage to the heir male of his tenant after her age of 14 and where not, 73 a & b 78 b ¶.
Where the Lord shall have the double value or forfeiture of the mariage, and where not, 79 a † b ¶ 82 b † *.
Where the Executors or Administrators of the Lord shall have sixty two years to make a tender, 79 a *.
Where the tender of mariage to an heir female before her age of 14 shall be good, and where not, 79 a *.
Where the Lord may tender mariage to the heir already married, and where not, 79 b ¶.
Where the Lord shall have the custody of the heir married in the life of his ancestor, and where not, 80 a †.
At what age each party married may agree or disagree to the mariage, and at what not, 79 b 80 a †.
Where the Lord shall have the single value of the mariage without tender, 81 a *.
What remedy the Lord hath for the single value or forfeiture of the mariage, 79 a * 82 b † *.
For disparagements in mariage, vide tit. Disparagement.
Vide tit. Wardship.

¶ Mariscus & mora quid, 5 a †.

¶ Marshall.

The derivation of the word, 74 a †.
The office of Marshal of the Kings hoth, 74 a *.
Who first Earl Marshall, 106 a †.
The jurisdiction of the Court of the Constable and Marshal, and according to what law they proceed, 391 b †.

¶ Maxim.

What and whence so called, 11 a † 343 a †.
Not to be disputed, 11 a † 67 a † 343 a †.

¶ Meason.

What, and how favoured in law, 54 b * 56 b † 200 b †.

¶ Merchants.

How favoured in law, 2 b †.
Where the joynt debts, &c. of Merchants by the death of one shall not survive to the other, 182 a *.
Where one joynt Merchant shall have allowance of his expences and charges in an accompt against him by his Companion as Receiver, 172 a ¶.

¶ Mesne.

Whence such writ so called, and where it lyeth, 100 a † *.
The several judgments in a writ of mesne, 100 a *.
The moeity in such writ, ibid.
Where by purchase of the tenancy by the Lord paramount the mesnalty shall be extinct, 152 b.
And here the Lord paramount release or confirm to the tenant to hold in frankalmoign or by lesser services the mesnalty shall be extinct, 152 b *.
What remedy the mesne hath for the surrender of his rent upon such extinguishment, 153 a †.
Where, and for what cause the tenant shall forejudge his mesne, and where and for what not, and what persons shall be bound by such forejudger, vide tit. Forejudger, & Stat. W. 2 cap. 9.
Where the arrerages of the mesnalty shall be lost by acceptance of services by the hands of the tenant, Vide tit. Acceptance.
Where the wife shall have a writ of mesne upon an original granted to her husband, 141 a *.

¶ Minera quid, and what shall pass by that name, 6 a †.

¶ Mise

The Table.

¶ Mise.

The derivation and ſeveral acceptions of the word, 294 b †.
Vide tit. Right.

¶ Monk.

In what caſes a Monk may maintain an action at the common law, and in what not, 132 b *.
The ſeveral orders of Monks and Friars formerly in this Realm, 132 a *.

¶ Monſter.

What iſſue reputed in law a Monſter, and what not, 7 b ¶ 29 b ¶.

¶ Money.

The derivation of the word, 207 b †.
Its Synonima, and their Etymologies, ibid.
What ſhall be ſaid lawful money of England, and what not, 207 a ¶ 208 a †.
The value of a mark, pound, ſhilling, &c. anciently, 294 b †.

¶ Mordanceſter.

Where ſuch writ lyeth, 159 a ¶.
Where it lyeth not againſt privies in bloud, 242 a ¶.
Where it lyeth not againſt a Baſtard eigne, 224 b †.
Where in a nuper obiit the defendant claim by purchaſe, the plaintiff may have a Mordanceſter againſt her for the whole, vide tit. Eſtoppel.

¶ Mortmain.

The derivation of the word, 2 b * ¶.
What perſon ſhall enter for alienation in Mortmain, and within what time, 2 b *
Where the appropriation of a Church ſhall be Mortmain, vide tit. Appropriation.

¶ Morgage.

The ſignification and derivation of the word, 205 a *¶.
Where a day of payment being limited a tender by the heir of the Morgagor or after his death ſhal be a good performance of the condition, 205 b * ¶ 208 b †.
What perſons may tender money in performance of a condition in morgage, and what not, 206 a † b ¶. 208 b * 209 a †.
Where payment by a ſtranger ſhall be a good performance, and where not, 206 b ¶ 207 a †.
Where the morgagee die before the day, to whom payment ought to be made in performance of the condition, vide tit. Payment.
Where no place is expreſſed for the payment of money upon the morgage where the tender ſhall be made, 210 a ¶ vide tit. Tender.
Where no time being expreſſed notice of payment ſhall be given to the Morgagee, 211 a ¶ vide tit. Notice.
Where the acceptance of a collateral thing by the morgagee in ſatisfaction ſhall bind him, and where not, 212 b * vide tit. Acceptance.
Vide at large in tit. Conditions.

¶ Mulier.

The ſeveral ſignifications of the word, and how taken in the law of England, 243 b ¶.
Vide at large in tit. Baſtardy.

¶ Murder.

The Etymology and ſignification of the word, 287 b ¶.
How it differeth from Homicide and Chancemedley, 287 b ¶ vide tit. Felony.

¶ Name.

What ſhall be ſaid a good name of Purchaſe, and what not, vide tit. Purchaſe.
Where the miſpriſion or alteration of the name ſhall vitiate a grant, and where not, 3 a †.
Where a grant without mention of ſurname or Chriſtian name or both ſhall be good to the grantee, and where not, 3 a * ¶
Where a man is baptized by one name, and after confirmed by another, which he ſhall uſe, 3 a ¶.
Whether the priviledges, &c. of a Corporation ſhall remain notwithſtanding the alteration of the name, 102 b ¶.
For names of dignity, vide tit. Nobility.

¶ Neife de en & trene, 25 b †.

¶ Nobility.

The ſeveral limitations of Nobility, and what eſtate of Nobility the King may grant, and what not, 16 b † *.
When the title and degree of Duke, Marquels, and Viſcount began in England. 69 b *.
Earls, Barons, &c. how created by writ in ancient times, and when creations by Patents firſt began, 9 b * 16 b † *.
The revenue and valuation of a Duke, Marquels, Earl, Baron, &c vide tit. Valuation & Barony.
What ſhall be ſaid the Reliefe of a Nobleman of each degree, 69 b †.
Whether a Noblewoman by marrying one inferiour to her degree ſhall loſe her Nobility, and where not, 16 b *.
Where a dignity or name of Nobility or office of Honour deſcends upon divers daughters, how it ſhall be divided, and which ſhall have the dignity and execute the office, 165 a *.
Iſſue of Duke, Earl, &c. or no Duke, &c. how tryable, 16 b *.
Beauchampe King of Wight, 83 b *.
Vide tit. Barony.

¶ Non Compos mentis, vide tit. Dum non Compos, &c.

¶ Nonſuit.

When the Plaintiff ſaid to be Nonſuit, 138 b ¶.
The ſeveral kinds of nonſuit, ibid.
The difference between a Nonſuit, Retrayt, and a Departure, vide tit. Retrayt.
In what actions nonſuit after appearance ſhall be peremptory, and in what not, 139 a *.
Where the nonſuit of one Demandant, or plaintiff ſhall be the nonſuit of both, and where not, 139 a ¶.

The Table.

What persons may be nonsuit, and what not, 139 a † 227 b *.
At what time the plaintiff may be nonsuited, and at what not, 139 a † vide Stat. 2 H. 4. cap. 7.

¶ Notice.

The several kinds of notice, 309 b *.
Notice an incident inseparable to attournment, ib.
¶ Where the Lord shall not be compelled to avow upon the feoffee of his tenant without notice, 269 b ¶.
Where the Obligor or Mortgagor hath time during his life to pay money, payment at the place without notice shall be no performance, 211 a * ¶.
Where the grantee of a reversion shall not take advantage of a condition within 32 H. 8 without notice to the lessee 215 b †.
Where a man is bound that I. S. shall enfeoffe a stranger such a day, notice ought to be given by I. S. to the stranger, 211 a ¶.

¶ Nusance.

Where a man may have a particular remedy by action for a publick nusance, and where not, 56 a † *.
How publick Nusances punishable.

¶ Obligation.

The legal acception of the word, 172 a †.
Where Obligations made in the third person, shall be good, and where not 229 b ¶ 230 a † vide Stat. 34 E. 3 cap. 4.
Where an Obligation made and dated beyond sea shall be good, and how triable, 261 b ¶ vide tit. Trial.
Where upon an Obligation to pay money at several days, a debt lyeth not till all the days incurred, vid. tit. Debt.
Where an Obligation having a Condition impossible, or against Law shall be good, and where not, vide tit. Condition.
¶ Where the intermariage of one Femme Obligee with the Obligor, shall extinct the debt as to both, 264 b ¶.
¶ Where a release of all actions shall discharge an Obligation before the day of payment, vide tit. Release.

¶ Occupation.

The several significations of the word, and to what properly appertain, 249 b *
The writ of Occupavit, and where it lyeth, ibidem.

¶ Occupant.

Who said to be an Occupant, 41 b † *.
Of what inheritances Occupancy may be, and of what not, 41 b * 388 a †.
How Occupancy may be prevented, 41 b * 387 b.
Where an Occupant shall be liable to wast and payment of rents, 41 b †
No occupancy against the King, 41 b *.

¶ Office and Officers.

Offices of Justice, &c. granted to persons insufficient, void 3 b * vide Stat. 12 R. 2 cap. 2.
Such Offices not grantable in reversion, 3 b *.
Where non user shall be a forfeiture of an Office, and where not, 233 a ¶.
Where Offices may be executed by deputy, and where not, 234 b †.
¶ Where the Grantor may oust his Officer at his pleasure, and where not, 232 a ¶ b †.
What persons capable of Offices of Honour, and what not, 107 b per tot. cap.
What persons capable of an Attornithip in the Kings Court, and what not, vide tit. Attorney.
What persons capable of the Stewardship of a Manor, and what not, 3 b * 61 b †.
¶ Where the selling or contracting for an Office of Justice, &c. shall disable the party to be capable thereof, 234 a *.
Where an Office of Honour descend upon divers Daughters, how and by whom it shall be executed, vide tit. Nobility.
Where, and what Offices may be entailed, and where, and what not, 20 a *.
¶ Where a man shall be tenant by the courtesie of an Office, 29 b †.
What things may be appendant to an Office, and shall pass by grant of the Office, 49 a * vide tit. Appendant.
The Office of the Kings Admiral described, 94 a ¶.
Office of Admiral, vide tit. Admiral.
Office of Marshall, vide tit. Marshal.
Office of Sheriff, vide tit. Sheriff.
Office of Escheator, vide tit. Escheator.
Office of Steward of a Court, vide tit. Steward.
Office of a Bayliff, vide tit. Bayliff.
Office of Ordinary, vide tit. Ordinary.

¶ Office, or Inquisition.

Where the estates of particular tenants shall be saved, albeit they be not mentioned within the Office, 77 b †.
What remedy for the heir where he is found by the office of fewer years, than in truth he is, ibidem.
¶ What remedy for the true heir, where another is found heir by the Office, and where one is found heir in one County, and another in another County, 77 b * 243 a *.
What remedy where one is untruly found by Office lunatick or dead, &c. ibidem.
Where upon Office found that a person attainted is seised, the party having title may have a traverse, or monstrans de droit, 77 b *.
Where upon an Ignoramus found by Office, it shall be taken to be a tenure in Capite, and where not, ibid.
¶ Where the heir within age shall have a traverse to an Office, which falsly finds an immediate tenure of the King, 77 b *.
Vide Stat. 2 E. 6 cap. 8 concerning the finding of Offices, and the several benefits introduced by that Statute.

¶ Ordinary.

The Office and duty of the Ordinary, and whence so called 96 a * 344 a *
Where a release of an action by the Ordinary shall be good, 292 b †.
Where a Church donative shall be visited by the Patron, and not by the Ordinary, 344 a †.
Where the King found a Church donative without any special exemption, his Chancellor shall visit, and not the Ordinary, 344 a *.

Where

The Table.

¶ Where the Charge of the Parſon and Patron without the Ordinary, and where of the Patron and Ordinary without the Parſon ſhall be concluſive to the ſucceſſour, and where not, vide tit. Confirmation, & tit. Patron.

¶ Ouſter le main, vide tit. Livery.

¶ Outlawry.

THe derivation of the word, 112 b ¶.
Why a feme outlawed is called a waive, ibidem.
Where Outlawry in the plaintiff ſhall diſable him to bring an action at the Common Law, and where not, 128 a* ¶.
In what actions Outlawry may be pleaded in diſability of the perſon, and in what not, 128 a* ¶.
At what age a man may be outlawed, and at what not, 122 b ¶ 128 a ¶.
Where in a plea of Outlawry the Defendant ought preſently to ſhew the record in Court, and where he ſhall have a day over, 128 b †.
¶ Where Outlawry in a forrein iuriſdiction ſhall not diſable the plaintiff at Weſtminſter, 128 a ¶.
Outlawry in the Executor no diſability to bring an action in right of his Teſtator, 128 a*.
Outlawry in the Mayor no diſability to the corporation to bring an action, ibidem.
In what actions Outlawry may be pleaded in bar, and in what not, 128 b*.
Where proceſs of Outlawry lay at the Common Law, and in what actions it lyeth at this day, 128 b *.
What things are forfeitable by Outlawry, and what not, vide tit. Forfeiture.
How anciently perſons Outlawed might be put to death by any man, and when that was reſtrained, 128 b*.
The ſeveral wayes of reverſing Outlawries. 159 b †.
What matters ſhall be ſaid good cauſes to reverſe an Outlawry, and which of them are pleadable, and which not, 259 b † 260 b †.
Outlawry no preiudice to the party until return of the Exigent or removal by Certiorari, 128 b † 288 b*.
Where a perſon outlawed may be a witneſs, and where not, 6 a † *.
Where a perſon outlawed cannot be an Auditor, Juror, &c. ibidem, vide tit. Juror.
The form of the Judgment upon Proceſs of Outlawry in the County Court, and the form in London, 288 b*.

¶ Oxgang of land what, 69 a*.

¶ Panel.

THe ſignification of the word, 158 b*.
Vide tit. Array, & Challenge.

¶ Pardon.

BY a pardon of all felonies what crimes anciently, and what at this day are pardoned, vide tit. Felony.
Pardon after Attainder no reſtauration of bloud, 391 b ¶ 392 a † vid. tit. Corruption of bloud.
Where a pardon after the action brought, and before iudgment ſhall diſcharge the party of an amerciament, 126 b ¶.

¶ Park, vide tit. Foreſt.

¶ Parliament.

THe derivation of the word, 110 a †.
The Court of Parliament what; and of what members it conſiſteth, 109 b ¶.
How called in ancient times, and how called at this day in other Countries, 110 a †.
The Antiquity and Iuriſdiction of this Court, 110 a ¶.
The number of Seſſions of Parliament ſince the Conqueſt, ibidem.

¶ Parol demurre.

WHere the parol ſhall demur for the nonage of one parceener, where her ſiſter is of full age, 164 a † vide tit. Age.

¶ Parſon and Patron.

THe legal acception of the word (Parſon,) and why ſo called, 300 a ¶.
¶ Who ſaid to be a Parſon imperſonee, 300 b †.
To what intents a Parſon or Vicar eſteemed in Law to have a fee ſimple, and to what, but for life, 67 a* 300 b ¶ 341 a.
What actions a Parſon may maintain in his politick capacity, and what not, 341 a ¶ b † ¶ 342 a ¶
Where one Church may have two Parſons, and where two Incumbents ſhall be ſaid but one Parſon in a Church, 18 a †.
¶ Where two Parſons be in debate for Tithes above the fourth part, one man being Patron of both Churches, no Iudicavit lyeth, 243 a*.
Where the grant, &c. of the Parſon ſhall bind his ſucceſſors by the confirmation of the Patron, &c. and what ſhall be a ſufficient confirmation, and what not, vide tit. Confirmation.
Where a rent granted by the Patron and Ordinary in time of vacation ſhall bind the ſucceeding Parſon, 343 b ¶.
Where an annuity granted by the Parſon and Ordinary ſhall bind the ſucceſſors without aſſent of the Patron, and where not, 343 b ¶ 344 a †.
Where the Patron and Incumbent may charge a donative in perpetuity, 301 b † 344 a †.
Where the Parſon ſhall have aid of his Patron and and Ordinary, vide tit. Aid.
Where a Leaſe by the Parſon ſhall be good againſt his ſucceſſour, and where void, and where but voidable, vide tit. Leaſes.
To what purpoſes a man ſaid to be a Parſon by admiſſion and inſtitution, before induction, and to what not, vide tit. Quare Impedit.
Where the alienation of the Parſon ſhall be no diſcontinuance to his ſucceſſour, vide tit. Diſcontinuance.
The fee ſimple of the Parſonage in Abeyance, and in no perſon certain, 341 a 343 a.
¶ Where by the death of the Parſon the freehold ſhall be in abeyance, 342 b ¶.
Vide tit. Præſentation, & Quare Impedit.

¶ Partition and Parceners.

PArceners, whence ſo called, 163 b † 164 b †.
The deſcription and diviſion of parceners, 163 a.
Of what inheritances coparcenary may be, and of what not, and in what manner partition ſhall be made, 163 b* ¶ 165 a b †

The Table.

Where Parceners shall be deemed in Law as one heir, and where as several heirs, 163 b ¶ 164 a † 196 b *.

Where one Parcener shall have the privileges of her age, notwithstanding the full age of her sister, vide tit. Age & Paroll demurr.

To what purposes Parceners are said to have several freeholds, and to what but one, 164 a *.

Where Parceners in several degrees shall joyn in a real action, and where not, 164 a * ¶ 196 a ¶ b † vide Stat. Gloceſt cap 6.

Where by the disclaimer in bloud of one Parcener in a Superiour, the other shall have a Mordancester against her for the whole, vide tit. Estoppel.

The several ways of making Partition, and what Partition shall bind, and by what persons, and what not, 165 b 166 a & b 167 a 169 a ¶ 170 a ¶ b 171 a b †.

What act by one Parcener shall be deemed in Law a division of the coparcenary, and what not, 167 b † * 174 b ¶.

Where in a real action by one Parcener against her sister, judgment shall not be given in severalty, vide tit. Judgment.

The several judgments in a Partition, and upon which a writ of Error lyeth, 167 b * 168 a †.

Where upon Partition made, the eldest daughter shall have election, and where not, 168 a ¶ b † 167 a † 168 a † b ¶ 186 b ¶.

Where such Partition shall be good without Deed, secus between joyntenants, 169 a † vide tit Joyntenants.

Where a rent, &c. granted for owelty of Partition shall be good without deed and where not, 169 a ¶ b † vide tit. Rents.

Where a rent is granted generally for owelty of Partition, out of what land it shall be intended to issue, 169 b †.

Where a rent is granted to two coparceners, for owelty of Partition, or where reserved upon a feoffement in fee, in what nature they shall be said seised of this rent, 169 b * ¶.

Where a rent granted by the husband for owelty of Partition shall bind the wife, 169 b ¶.

Where Partition made between the issue in tail, and her sister not inheritable to the tail shall bind the issue, secus of a Partition between issue and a stranger, 170 b †.

Where a Partition between bastard eigne and mulier puisne, shall bind the mulier and her heirs, 170 b * 244 b †.

Where a Partition in Chancery shall be avoided by an Infant, secus where a writ of Partition is brought and judgment had, 171 a.

Where the issue of one Parcener upon the not dissent of Assets shall enter into the moity of lands in tail allotted to the other Parcener, 172 b 173 a †.

Where by a Partition against common right, the Parcener shall be liable to charges made since the dissent, 173 a ¶.

Where by the eviction of part of the land allotted to one Parcener, the whole Partition shall be defeated, and where not, 173 b * ¶ 174 a * †.

Where the privity between Parceners being destroyed the condition and warranty in Law shall be extinct, 174 a ¶.

What shall be said a sufficient continuance of the privity to take advantage of such warranty, &c and what not, 174 a * b †.

Where the Feoffee of one Parcener shall have aid of the other Parceners to deraigne a warranty paramount, and where not, 174 a ¶ b †.

Where, by whom, and against whom a writ of Partition lay at the Common Law, and where, and by whom, it lyeth at this day, 175 a b † vide Stat. 32 H. 8 cap. 32.

The difference between a Partition and an Exchange, 51 a ¶ 172 b * 174 a *.

Parcenary by the custom described, 175 b *.

The manner of Partition in Dotchyot, and where such Partition shall be made, and where not, 167 a b 177 a 178 b 179 a b.

Who ought to be first agent in such Partition, and to whom the lands shall descend in the interim, 176 b †.

Where after such Partition the lands given in Frankmariage shall be of the nature of lands descendible, 177 b *.

Where in such a Partition the value of the lands, &c. shall be accounted as at the time of the Partition, and not as at the time of the gift, 179 a †.

Upon whom the reversion of such estate in Frankmariage shall descend, 179 a *.

Where a Partition between three Parceners, one to hold in severalty, and the other in Parcenary shall be good, and where not, 180 a † *.

Where a release by one Parcener to another shall be good, and how it shall enure, vide tit. Release.

Where upon a joynt action and recovery by divers Parceners damages shall enure to them in severalty, vide tit. Damages.

Where the entry of one Parcener shall be accounted in Law the entry of both, and where not, vide tit. Entry Congeable.

Where one Parcener enter or recover, the estate being put to a right, the other also shall enter and occupy with her, and where not, vide tit. Joyntenants.

Where one daughter disseise the Discontinuee of her father to the use of her self and her sister, and being ousted by the Discontinuee recover in an Assise, by the agreement of the other sister after they shall be joyntenants, and not Parceners, 374 a ¶.

Where a tenancy by homage descend upon divers Parceners the eldest alone, and where all shall do Homage, 67 a ¶ b †.

Vide tit. Joynt-nants.

¶ Payment.

Where Payment of money in shew and apparance, and not really, shall be no performance of a condition, 209 b *.

Where the Mortgagee dying before the day, Payment shall be made to his Executors, and where to his heirs, 209 b * ¶ 210 a †.

Where upon a condition of Payment to one, his heirs and assignes, Payment to his Executors shall be a good performance, and where not, 210 a *.

Where upon Payment of money at several dayes, an action lyeth for not Payment at each day, and where not before the last day be past, 47 b * 291 b ¶.

¶ Per quæ servitia.

Where tenant in tail shall be compelled to Attorn in a Per quæ servitia, 316 b † vide tit. Attornment, & Quid Juris clamat.

Where in a Per quæ servitia the tenant shall not be compelled to attorn until allowance of his privileges, 320 b * ¶ vide tit. Attornment, & Quid Juris clamat.

Where upon grant of a Seignory for life, the remainder in fee, he in the remainder after the death of the tenant for life shall have a Per quæ servitia, 252 a ¶.

The Table.

¶ Pew quid, 5 b ¶.

¶ Pyracy unde vide tit, Attainder, & tit. Felony.

¶ Pleadings and Pleas.

Placitum unde, 17 a * 303 a †.
The Commendation of good Pleading, and the means to attain to it, 17 a * 168 a † 303 a †.
Pleading a good argument in Law, 115 b *.
Rules concerning the manner and order of good Pleading, 303 a *.
The several parts of Pleading, and by what names diſtinguiſhed, 303 b ¶.
Where the Plea of every man ſhall be conſtrued moſt ſtrongly againſt himſelf, 303 b †.
Where in Pleading neceſſary circumſtances implyed by Law, need not be expreſſed, 303 b * 310 b ¶.
Where a defective Plea ſhall be made good by the Plea of the adverſe party, and where not, 303 b *.
Where ſurpluſage ſhall vitiate a Plea, and where not, 303 b *.
What Pleas ought to be averred, and what not, 303 a ¶.
Plea by argument or rehearſal, not good, 303 a ¶.
What certainty is required in Counts, Barres, Replications, Eſtoppels, &c. 303 a *.
Where an inducement to the matter generally alleaged in the Plea, ſhall be ſufficient, ſecus of the matter it ſelf, 303 a ¶.
Where a general allegation of proceedings in Eccleſiaſtical Courts or a matter of record in Pleading ſhall be ſufficient, and where not, ibidem.
What eſtates in Pleading may generally be alleaged, and where the commencement of particular eſtates muſt be ſhewed, and the life of the tenant averred, and where not, 303 b †.
Where and in what kind of Pleading the Donee or Leſſee ought to alleage ſeiſin in his Donor or Leſſor, and where Cum demiſit, or Cum dedit, &c. 303 a *.
Where the party may Plead performance of all covenants generally, and where they ought to be ſpecially pleaded, 303 b *.
Where the concluſion of a Plea (Et iſſint & ſic) ſhall be a waiver of the ſpecial matter, and where not, ibidem.
Where a thing is done by force of a warrant or Authority, it ought to be Pleaded, 283 a * 303 b †.
Where a ſpecial cauſe of Juſtification or excuſe may be given in evidence, and where it ought to be pleaded, 282 b ¶ 283 a per tot. pag. vide Stat. 23 H. 8 cap. 5 & 7 Jac. cap. 5.
Where the tenant by his falſe Plea ſhall loſe a benefit or advantage given him by the Law, 33 a † 366 a *.
How a Freehment in fee, and a Leaſe for years ought to be pleaded, 200 b ¶ 201 a †.
Where in Pleading an eſtate of freehold, the party ſhall not plead an entry, ſecus of an eſtate for years, 201 a †.
Where in Pleading the party ſhall be ſaid Seiſitus in dominico ut de feodo, and of what things ut de feodo & jure, 17 a ¶ b *.
The neceſſity of making a defence in every Plea, 127 b * ¶.
The form of a defence in a perſonal action, 127 b *.
The effect and conſequence of ſuch defence, 127 b * ¶.

For departure in pleading, vide tit. Departure.
For duplicity of Pleading, vide tit. Double Plea.
Where the matter being ſufficiently ſhewed, the count ſhall not abate for want of form, vide Stat. 36 E. 3 cap. 15.
Where at this day after demurrer, judgment ſhall be given according to the matter in Law without reſpect to the imperfection of the Pleading, 304 b * ¶.
The courſe and eſtimation of Pleading in the time of E. 1 E. 2 E. 3 H. 6 &c. 304 a ¶ b *.

¶ Plenarty.

Where and againſt what perſons Plenarty ſhall be by inſtitution, and againſt whom not until induction, 119 b ¶ 344 a ¶.
Where and againſt whom Plenarty was a good plea in Quare Impe or Darrein præſentment at the Common Law, and where not, 133 a ¶ 344 a †.
Where trial of Plenarty ſhall be by the Common-Law, and where by certificate of the Biſhop, 344 a ¶.
Vide tit. Quare Impedit.

¶ Plow-land what, 69 a ¶ 86 b *.

¶ Poſſeſſion.

Continuance of Poſſeſſion, a violent preſumption of title, 6 b ¶.
Where a long Poſſeſſion anciently took away a right of entry, 237 b *.
Where Poſſeſſion of parcel of the land demiſed ſhall be a Poſſeſſion of the whole, and where not, 48 b ¶.
Where the Poſſeſſion of a Leſſee for years, ſhall be the Poſſeſſion of him in the reverſion, 15 a * 243 a †.
Of what things a man cannot be put out of Poſſeſſion, and of what only at his own election, 306 b * 307 a †.
Where divers perſons being upon the land, the Law ſhall adiudge the Poſſeſſion in him that right hath, and where not, 368 a †.
Where the Seiſure of the King without cauſe ſhall be adiudged the Poſſeſſion of him for whoſe cauſe he ſeiſed, 245 b †.
Where the diſcontinuance of a right of Poſſeſſion out of the hands of him that hath the abſolute right, ſhall draw with it the meer right to the land, and where not, vide tit. Right.
To what purpoſes the Gardein laid poſſeſſed of his ward before entry, and ſeiſure, vide tit. Gardein.
What act ſhall put the Patron out of Poſſeſſion of an Advowſon, and what not, vide tit. Præſentation, & Quare Impedit.
What ſhall be a ſufficient Poſſeſſion to make the ſiſter or uncle, &c to inherit, and what not, 11 b * ¶ 14 b 15 a 281 a ¶.
Of what things an eſtate a Poſſeſſio fratris may be, and of what not, 14 b * ¶ 15 b †.
Where there ſhall be a Poſſeſſio fratris without entry, & è converſo, 15 a * ¶.
Where a ſeiſin ſhall be ſufficient to entitle the husband by the courteſie that ſhall not make a Poſſeſſio fratris, vide tit. Courteſie of England.

¶ Poſſibility.

A Gift to a man and a woman not married, or where one or both of them are married elſe-

The Table.

where, and the Heirs of their bodies a good tail for the Possibility, 20 b ¶ 25 b ¶ vide tit. Grants.
Possibility upon a possibility reflected in Law, 25 b ¶ 184 a †.

¶ Pound, vide tit. Distress.

The writ of Parco fracto whence so called, and where it lyeth, 47 b *.
Where the Defendant may justifie in that writ, and where not, ibid.

¶ Præcipe.

The several Writs of Præcipe, 101 b † 139 b *.

¶ Præmunire.

Whence such writ so called, 129 b * ¶.
The judgment in a Præmunire, 129 b ¶.
The nature and quality of the offence, 130 a †.
What lands, &c. forfeitable by attainder in a Præmunire, and what not, 130 a † 391 a ¶.
Where such attainder shall be a good plea in disability of the person to bring an action, 129 b *.
Such attainder no corruption of blood, vide tit. Attainder.

¶ Prerogative.

The Etymology and signification of the word (Prerogative) and by what names called anciently 90 b.
Where the King by his Prerogative shall have the custody of Lands of the ward, holden of other Lords, and of inheritances which lie not in tenure, and where not, vide tit. Wardship.
Where a grant of a Reversion to or by the King, shall be good without Attornment, 309 b * 314 b *.
Where the title of the King and common person concur, the Kings title shall be preferred, 30 b †.
Where a man being indebted to the King, and to a common person, the common person shall be satisfied before the King, and where not, 131 b *.
Where the King after seisure of the temporalties shall present to a Church which voided in the life of the Bishop, 90 a ¶.
Where the King give Land with his Cosen in Frankmariage, by the death of the Feme without issue, the estate of the husband shall determine, secus of a gift by a common person, 21 b ¶.
Where a Quare Impedit lay by the King at the Common Law upon an usurpation, but not by a common person, 344 b †.
Plenarty in a Quare Impedit no plea against the King, 133 a ¶ 344 b †.
Where the King may revoke his presentation after institution, and before induction. 344 b *.
In what Cases the Kings grant with a Non obstante shall dispense with the penalty of a Statute, and in what not, and where it shall be good without a Non obstante, 99 a † 120 a * 234 a *.
What shall be said a good plea against the Letters Patents of the King, and what not, 262 a *.
By what act an estate tortied in the King shall be devested without Petition or Monstrans de droit, and by what not, 354 b * vide tit. Entry Congeable, & Remitter.
Where an Advowson shall pass from the King within the words (cum pertinentiis) without express mention, and where not, 77 a ¶ vide tit. Grants.
Where the King shall be bound by a warranty, and where not, vide tit. Warranty.
Where an act of Parliament shall bind the King without being named, and where not, 43 b * 98 b ¶ 99 a * 120 a *.
Where an act done by the King during his nonage shall bind him, 43 a ¶.
Where a gift to the King, without the words (Heirs or Successors) shall pass a Fee-simple, 9 b ¶.
Upon such purchase by the King, in what capacity he shall be said seised, 16 a † 190 a ¶.
Where the person of the King shall alter the nature of a Discent, 15 b ¶.
Where the grant of the King, wherein he is deceived, shall be void, 27 a *.
No Laches imputed to the King, 41 b * 57 b * 90 b * 118 a ¶ 119 a † 294 b † 344 b †.
Where upon a gift to the King and the Heirs of his body, before the Stat. W. 2 an alienation by him before issue, was no bar of the Reversion, 19 b †.
Where the Queen shall participate of the Prerogative of the King, and where not, vide tit. Queen.

¶ Prescription.

The definition of a Prescription, 113 a ¶.
How it differeth from a Custom, 113 b
The incidents inseparable to a prescription, 113 b ¶.
To what things a man may make title by prescription without Charter, and to what not, 114 a ¶ b † 144 a ¶.
Where a title to Lands by prescription shall be good, 195 a ¶.
By what means a title by prescription or Custom may be lost by interruption, and by what not, 114 b *.
Where a prescription or Custom may be alleaged against an Act of Parliament, and where not, 111 b † 115 a * ¶ b †.
How a man ought to prescribe in things which lie in Grant, and how in things which lie in Livery, 121 a vide tit. Ouel Estate.
What shall be a sufficient continuance to make a title of prescription, and what not, 113 b 114 a.
Vide tit. Custom.

¶ Presentation.

The description and derivation of the word, 120 a †.
How many several ways a Church presentative may become void, 100 a †.
Where a presentation by parol shall be sufficient, 120 a *.
Where one Joynt tenant or Tenant in Common present, or both present severally the Ordinary may admit or refuse such presentee at his pleasure, 186 b ¶.
Where two Parceners present one Clerk, and the other other two another, the Ordinary may refuse both, ibidem.
Where the presentation of one Parcener in the turn of another after partition shall not put the other out of possession, 143 a *.
Where the several presentations of Parceners shall

The Table.

Shall not make the Church litigious, ibidem.
Presentation in time of war, and admission and institution in time of peace shall not put the Patron out of possession, 249 b ¶.
Where a Presentation to a Church in time of vacation of an Abathy shall not put the Successor out of possession, 263 b ¶.
Where by Presentation to a Church donative, and admission and institution the Church is for ever become presentative and where not, 344 a †.
How Donatives first began, and how they may be created at this day, 344 a *.
Where the King may revoke his Presentation before induction, vide tit. Prerogative.
Where the Husband shall present to a Church, which voided in the life of his wife, 120 a ¶ vide tit. Baron & Feme.
Where upon Dissent of an Advowson to divers Parceners, the eldest and her Assignee shall have the first Presentment, 166 b * 186 b ¶.

¶ Præsumptio quid, & quotuplex, 6 b ¶.

¶ Primer seisin.

Where it shall be due to the King upon the death of his Tenant, and where not, 77 a *.
What value shall be paid to the King upon Livery or Primer seisin, 77 a *.
At what age the King shall have Primer seisin of the Heir of his Tenant in Socage, 91 b †.
Vide tit. Livery.

¶ Privies, and Privity.

The several sorts of Privies, 271 a *.
What Privity between Joyntenants, what between Tenants in Common, and what between Parceners, 169 a * 200 b *.
What privity requisite to an Attornment upon grant of the Seigniory, and what not, vide tit. Attornment.
Where and to what releases Privity requisite, and where and to what not, vide tit. Release.
What act by one parcener shall be a destruction of the privity, as to take advantage of a Warranty or condition in Law, and what not, vide tit. Parceners.
What act of the Tenant by homage Ancestrel shall be an interruption of the privity between him and his Lord, and what not, vide tit. Homage Ancestrel.
Where a privity once discontinued shall for ever be extinct, 103 a * ¶ b †.

¶ Profession.

When a man shall be said to be professed in Religion, 132 a † 136 a †.
At what age a man may be professed in Religion, 137 a †.
To what purposes a profession hath the effects of a natural death, and to what not, 132 a ¶ b †.
Where and what profession in Religion shall disable the party to bring an Action, and where and what not, 132 b *.
Where the husband and wife may be professed in Religion without either's consent, and where not, 132 b *.
Vide tit. Monk.

¶ Property.

The several kinds of Property, 145 b *.
Where in a Replevin, the claim of Property by the Defendant, shall hinder the delivery of the goods by the Sheriff, 145 b *.
Such claim of Property by the Bayliff or servant of the Defendant not available, ibidem.
Where notwithstanding a Property once tried and found for the Defendant a Replevin lieth, and where not, vide tit Replevin.

¶ Protections.

The several sorts of Protections, 130 a *.
Protections Cum Clausula volumus, why so called, and the several kinds of them, 130 a *.
Protections quia Profecturus, and quia Moraturus, what and why so called, ibidem.
For what causes such Protections are grantable, and for what not, 130 a ¶.
For what persons such Protections are allowable, and for what not, 130 a ¶ b †.
In what action or plea a Protection cast for one Defendant, shall put the plea without day for all, and in what not, 130 a †.
Where and what Protection may be purchased pendente placito, and where and what not, 130 b *.
At what time a Protection may be cast, and at what not, ibidem.
Where a Protection cast at the Nisi prius, and repealed before the day in Bank, shall notwithstanding save the default of the party, and where not, 130 b *.
For what continuance of time such Protections ought to be 130 b * 254 b ¶.
To what places such Protections ought to be directed and to what not, 130 b ¶.
In what actions Protections are allowable, and in what not, 131 a †.
Under what seal, and to whom they are directed, 131 a *.
What persons ought to allow, or disallow of them, 131 a ¶.
By whom they may be cast, and in what manner, 131 a ¶.
By what means they may be avoided, and by what not, 131 a ¶ b †.
Where upon a repeal of the Protection, a Resummons or Re-attachment may be had within the year, 131 b †.
Where a return into England to provide necessaries for the war, shall be no breach of the conditional clause in a Protection, vide Stat. 13 R. 2 cap. 16
Protection quia indebitatus nobis exstitit what, and where it lyeth, 131 b *.
Protection cum Clausula nolumus why so called, and where it lyeth, 130 a * 131 b *.
Where a Protection shall be allowed, against the Queen, Iecus against the King, 131 a † 133 b †.

¶ Protestation.

The description of a Protestation, 124 b †.
Where a Protestation shall avail the party, al-

The Table.

heir the iſſue be found againſt him, and where not, 125 a ¶ 126 a *.

Where the Tenant ſhall not be compelled to attorn without entry of his proteſtation and allowance of his priviledges, 320 b vide tit. Per Quæ ſervitia, & Quod Juris clamat, vide tit. Pleading.

Pudzeld quid 233 a ¶.

Purchaſe.

The deſcription and derivation of purchaſe, 3 b * 18 a ¶ b †.

What perſons are of capacity to purchaſe, and what not, and who to their own uſe, and who only to the uſe of others, 2 a b 3 a & b.

What ſhall be ſaid a good name of purchaſe, and what not, 3 a.

The ſeveral conveyances of purchaſe, 10 a *.

Vide tit. Eſtates, Fee, & Freehold.

Purpreſture.

The Etymology and ſignification of the word, 277 b †.

How it differeth from intruſion, abatement, &c. vide tit. Abatement.

Quare Impedit.

What remedy againſt an uſurpation and plenarty at the Common Law, and what at this day, 344 a ¶ b † vide Stat. W. 2 cap ¶.

Where plenarty was a good plea in a Quare Impedit at the Common Law, and where not, vide tit. Plenarty.

Where and why at the Common Law, a Quare Impedit lay of a Church in Wales in the County next adioyning, 124 b †.

Dammages at the Common Law not recoverable in a Quare Impedit, 17 b * 344 b †*.

Where a Quare Impedit lay at the Common Law by a common perſon, and where not, 344 b *.

Where and by what means a common perſon might remove an Incumbent at the Common Law by a Quare Impedit, and where, and by what not, 344 b *.

Where an uſurpation by Collation ſhall not put the Patron out of poſſeſſion, ſecus of him that hath a right of Collation 344 b *.

Where the Patron by preſenting, as procurator to another, ſhall put himſelf out of poſſeſſion, 52 a ¶.

Where an uſurpation after iudgment, and before execution ſhall put the Recoveror out of poſſeſſion, 238 a †.

Where upon a grant of three next avoidances, The uſurpation of the Grantor at the firſt avoidance, ſhall not put his Grantee out of poſſeſſion, as to the other two, 249 a *.

Where a preſentation by one Joyntenant ſhall ſerve for a title in a Quare impedit brought by the ſurvivor, 186 a *.

Where in a Quare Impedit by two Tenants in Common, the death of one ſhall not abate the writ, 198 a ¶.

Where a Quare Impedit lyeth of a Church donative, and the writ ſhall ſay, Quod permittat ipſum præſentare, &c. 344 a †.

Where in a Quare Impedit brought within the ſix months, the Incumbent ought to be named, or otherwiſe he ſhall not be removed, 344 b *.

Where the Clerk of the rightful Patron being inſtituted pendente lite in a Quare Impedit between the Biſhop and a ſtranger, he ſhall not be removed, ſecus of an uſurpation, 344 b ¶.

Where the Biſhop being named in a Quare Impedit ſhall not preſent by laps pendente lite ibid.

Where in ſuch caſe time devolving to the Metropolitan, or the King, they ſhall not collate, albeit they be not named in the Quare Impedit ibid.

Where the Church of the wife become void during the coverture, the husband ſhall maintain a Quare Impedit in his own name, 351 a ¶.

Where the Patron being outlawed, a ſtranger uſurp, and ſix months paſs, the recovery of the King in a Quare Impedit ſhall be a continuance of the Advowſon to the Patron, 363 b *.

Where Nonſuit in a Quare impedit ſhall be peremptory. Vide tit. Nonſuit.

Conuſance not grantable in a Quare Impedit, 134 b †.

A releaſe of actions real or perſonal a good bar in a Quare Impedit, 285 a ¶ b † vide tit. Releaſe.

A protection not grantable in a Quare Impedit, 131 a †.

Where avoidance of the Church ſhall be tryed by the Common Law, and where by Certificate of the Ordinary, vide tit. Plenarty.

Vide tit. Preſentation.

Quarentena quid, 5 b †.

Quarentine what, and where the wife ſhall have her Quarentine, and where not, 32 b * 34 b †.

Queen.

An exempt perſon from the King, and where ſhe may grant and purchaſe, ſue and be ſued without him, 3 a † 133 a ¶.

Her ſeveral prerogatives agreeing with thoſe of the King, 133 a 6 b † 127 a †.

Where ſhe partaketh of the condition of common perſons, 131 a † 133 b †.

Where the Queen, albeit ſhe be an Alien, or Jew, ſhall be endowed, 31 b ¶.

Que eſtate.

In what things a preſcription by a Que eſtate ſhall be good, and in what not, 121 a †*.

Where a man may plead a Que eſtate of a thing that lyeth in grant, and what not, 121 a *.

By what, and of what eſtate ſuch plea ſhall be good, and by whom, and of what not, 121 a ¶.

In what perſon a Que eſtate ought to be allegged, and in what not, 121 b †.

Quid Juris clamat.

Where the particular Tenant ſhall be compelled to attorn in a Quid Juris clamat upon grant of the reverſion, and where not, 218 a ¶.

Where the Leſſee ſhall not be compelled to attorn in a Quid Juris, &c. untill allowance of his priviledges, 320 b †.

Where

The Table.

Where in a Quid Juris clamat, by Baron and Feme, the privileges of the Lesse shall be entred of record notwithstanding the Coverture, secus in case of an Infant, 320 b *.

Tenant in Tail not compellable to attorn in a Quid Juris clamat, secus in a Per quæ servitia, or Quem redditum reddit, 316 b †.

Where an Infant shall be compelled to attorn in a quid Juris clamat, vide tit. Infant.

Where one parcener grant her estate in a reversion by Fine, the Conusee shall have a quid Juris clamat for a moity. 310 b †.

Where the reversion of a Rent charge upon a Grant for life is granted over, a quid Juris clamat lyeth against the Grantee for life, and not against the Ter-tenant, 311 b ¶.

Where the Nonsuit of one plaintiff in a quid Juris clamat shall be the Nonsuit of both, 139 a ¶.

Vide at large in tit. Attornment, & Per quæ servitia.

¶ Quod ei deforceat.

Where and against whom such Writ lyeth, 331 b * 354 b ¶ vide Stat. W. 2 cap. 4.

The form of the writ, 355 a †.

Where upon a recovery by default in an Action of waste, a quod ei deforceat lyeth, 355 a & b.

Where it lyeth upon a recovery by default in an Assise, 355 b *.

Where notwithstanding he in the reversion is received upon the default of Tenant for life, and a verdict found against him, a quod ei deforceat lyeth by the Tenant, 355 b *.

Where it lyeth upon a recovery against Baron and Feme, albeit the Statute W. 2 saith, against Tenant in Dower, or for life, 356 a †.

Where it lyeth not by the wife upon such recovery after the death of the husband, 356 a *.

¶ RAdmans & Radchemistres qui 5 b * 86 a †.

¶ Ransome what, and whence derived, 127 a * vide tit. Fines.

¶ Rape.

The signification of the word, 123 b ¶.

What offence accounted in an ancient time, and how punished, and what at this day, ibid.

¶ Rationabili parte bonorum.

Where and by whom such writ lyeth, and where and by whom not, 176 b ¶.

¶ Ravishment of Ward.

Where and by whom it lyeth, 89 b *.

The form of such Writ, vide Stat. W. 2 cap. 35.

Where it lyeth against the Soveraign of a House of Religion, for admitting the Heir to be there professed, 137 a †.

Vide tit. Mariage & Wardship.

¶ Rebutter.

The signification and derivation of the word, 303 b ¶ 365 a *.

Where an Assignee shall rebutt by reason of a warranty in Law, and where not, 384 b †.

Where a Disseisor, &c. or other Tenant not privy in estate, or to the Deed, shall rebut, and where not, 385 a * ¶.

Vide at large in tit. Voucher, & Warranty.

¶ Recluse.

The signification and derivation of the word, 252 b *.

Where the entry of a person recluse shall be tolled by a Discent without claim, ibid. vide tit. Entry Congeable.

Where such person shall appear by Attorney, where others must in proper person, 255 b *.

¶ Record.

RECord what and whence derived, 117 b ¶ 260 a †.

How triable, 117 b ¶ 260 a †.

Which are Courts of Record, and which not, vide tit. Court.

When a Record is alterable, and when not, 260 a *.

Nul tiel record no plea against the Kings Letters Patents, ibid.

Outlawry no prejudice until it be of Record, 128 b † 288 b *.

Where in a plea of Outlawry, the Defendant ought presently to shew the Record, and where he shall have a day over, vide tit. Outlawry.

¶ Recovery.

The Etymology and signification of the word, 154 a ¶.

What remedy at the Common Law he in the remainder or reversion had upon a feined recovery suffered by tenant for life, and what at this day, vide Stat. W. 2 cap. 3 14 Eliz. cap. 8 vide tit. Forfeiture.

Where upon a recovery against tenant in tail execution may be sued against his issue, and where not, 361 b ¶.

Where a recovery by default against one out of the Realm in the Kings service shall not be avoided by error, 260 b *.

What persons might falsifie a recovery at the Common Law, and what at this day, vide tit. Falsifying of Recoveries.

Where a recoverer by feined title shall distrain and avow upon tenants for life or years, vide stat. 21. H. 8 cap. 15.

Where the recoveror shall have waste or distrain for a rent, for which the recoveree could not, and where not, vide ibid.

Where after recovery the demandant may enter, and distraine before execution, and where not, vide tit. Execution.

Where the feme or issue in tail shall be remitted against

The Table.

gainſt a recovery ſuffered by the huſband or tenant in tail, and where not, vide tit. Remitter.

¶ Recovery in value.

Where the heir at the common and the ſpecial heir joyn in deraigning a warrant paramount, to whom the recompence in value ſhall enure, vide. tit. Voucher.

Where a recovery being had againſt tenant in tail, and his wife which had nothing, upon a recovery over the recompence ſhall enure to the huſband only, 376 b ¶.

Where there ſhall be two recoveries in value upon one warranty, and where not, vide tit. Warranty & Voucher.

Where upon a warranty for life the recovery in value ſhall be in fee, and where but for life, vide ibid.

Where lands by purchaſe ſhall be liable to execution in value in caſe of a warranty by diſcent, and where not, 101 a ¶.

Where the lands which the vouchee had at the time of the voucher, or Warrantia Chartæ brought ſhall be liable to execution in value, notwithſtanding alienation before judgment, 102 a ¶.

Where upon a recovery in value by tenant in tail, after his death without iſſue, execution ſhall be ſued by him in the reverſion, vide tit. Execution.

Vide tit. Voucher & Warranty.

¶ Reddiſſeiſin.

Where it lyeth not upon a recovery in a writ of right cloſe in nature of an Aſſiſe in ancient demeſn, or in an Aſſiſe of freth force by bill, 154 a ¶.

Where it lyeth againſt one diſſeiſor above, albeit the recovery in the Aſſiſe was againſt two, ſecus where one diſſeiſor and a ſtranger reddiſſeiſe the plaintiff, 154 b †.

Where it lyeth not againſt the huſband and wife upon a recovery in an Aſſiſe againſt the wife, but where the wife was plaintiff in the Aſſiſe, ſhe and her huſband may joyn in the reddiſſeiſin, ibid.

Where two ſeveral reddiſſeiſins may lie upon one recovery in an Aſſiſe, 154 b †.

Where it lyeth againſt the diſſeiſor and his feoffee after the ſecond diſſeiſin, 154 b †.

Where it lyeth not againſt the tenant in the firſt Aſſiſe being no diſſeiſor, albeit he diſſeiſeth the Plaintiff after, 154 b *.

Where it lyeth upon a reddiſſeiſin of parcel of the tenements formerly recovered, ibid.

Where it lyeth of a rent ſeck by ſurpluſage formerly recovered by the meſn as a rent ſervice, 154 b *.

Where it lyeth by tenant in tail after poſſibility, &c. upon a recovery by him being tenant in ſpecial tail, ibid.

Where it lyeth upon a reddiſſeiſin of a common after a recovery of the land out of which, &c. 154 b *.

¶ Relation.

How the word (Prædict.) in grants ſhall have relation, 20 b †.

How the word (Eadem) ſhall have relation where two things are mentioned before, ibid.

The relation and force of the word (made) 81 b * 203 a *.

How the words from henceforth à die confectionis, &c. ſhall have relation, vide tit. Leaſes.

How the words (proxima advocatio) ſhall have relation, vide tit. Grants.

Where a feoffment relating to the eſtate of another, ſhall paſs a fee ſimple without the words (Heirs) 9 b ¶.

How and to what time a Condition broken ſhall have relation, vide tit. Conditions.

To what purpoſes an Attornment ſhall have relation, vide tit. Attornments & tit. Alien.

To what purpoſes a bargain and ſale after inrolment ſhall relate to the delivery of the deed, and to what not, vide tit. Bargain & Sale.

Where and to what intents an Eſcheat or Forfeiture ſhall relate to the time of the Felony committed, and where and to what not, 13 a ¶ 390 b * vide tit. Felony.

Where a Relation ſhall not work a wrong or charge to a third perſon, 150 a *.

Where the relation of an eſtate gained by wrong ſhall not defeat an eſtate ſubſequent gained by right, 277 b ¶ vide tit. Releaſes.

Regiſter, and its antiquity, 16 b ¶ 73 b ¶ 159 a †.

¶ Releaſes.

The form of a Releaſe, 264 b †.

The ſeveral ſorts of Releaſes, 254 a ¶ b *.

The proper words of Releaſes, and what words ſhall be ſaid to amount to a releaſe, and what not, 264 b * 302 a * vide tit. Grants.

What act by him that right hath ſhall be ſaid a releaſe in law of his right or action, and what not, and how it differeth from a releaſe in deed, 264 b * ¶.

How many ſeveral ways a releaſe may enure, 193 b * 273 b ¶.

Where a releaſe of a right to one that hath neither freehold in deed or in law ſhall be good, and where not, 265 b ¶ 266 a † b ¶ 267 a † 284 a ¶ b † *

Where a releaſe of an annuity to the Patron in time of vacation ſhall be good, ſecus to the Ordinary, 266 a †.

Where privity ſhall be requiſite to the releaſe of a right, and where not, 266 a † 268 a * 275 a †.

Where and by what means a diſſeiſee may releaſe his right for life only, and where, and by what not, 264 b ¶.

Where by a releaſe of all right in the land a power or authority ſhall be determined, and where not, 265 b †.

Where ſuch releaſe ſhall not extinct a future right or poſſibility, 264 a † 8 *.

Where a releaſe of dower to him in the reverſion upon an eſtate for life ſhall be good, 264 a *.

Where a releaſe to the tenant for life ſhall enure to him in the reverſion or remainder, & è converſo, and where not, 267 b per tot. pag. 275 a ¶ b † * 279 b † 285 b ¶ 297 b ¶.

Where and to what purpoſes a releaſe to him that hath but a bare right ſhall be good and available, and where, and to what not, 267 a ¶ 268 a † * b ¶ 269 a *.

How many ways a ſeigniory rent or right may be releaſed, 268 a *.

Where a releaſe to him that hath no eſtate or right ſhall be good, 265 b ¶ 268 a * 269 a †.

Where a diſſeiſor make a leaſe to one and his heirs pur autem vy, a releaſe by the diſſeiſee to the heir after the death of the leſſee before entry ſhall extinct his right, 275 a *. Where

The Table.

Where a release to one disseisor shall enure to his companion, and where not, 194 a * ¶ 275 b ¶ 276 a per tot. pag 278 a *.

Where a release by the patron to one usurper shall enure to both, 194 a * 276 a *.

Where a release to one feoffee of the disseisor shall enure to both, 194 b * 276 a ¶ 277 a †.

Where a release to one trespassor shall be available to his companion, 232 a † vide in the Preface to the Instit. fol. 4 a †.

Where a release to the Executors shall be a good bar in an action against the heir, 232 a *.

Where and to what purposes after a feoffment in fee by the tenant the release of the Lord shall be good to the feoffor, & where, and to what not, 269 a ¶ b *.

Where such feoffor shall take advantage of a release by the Lord to the feoffee, but not è converso, 269 b *.

Where a release to the assignee of tenant for life shall be a good plea in an action against the tenant for waste done before the assignment, 269 b *.

To what purposes a release to a lesser for years before entry, or to him that hath a future interest shall be good, and to what not, 46 b † 270 a * ¶.

Where a release to one in reversion or remainder for years shall be good to enlarge his estate, 270 a *.

Where the release by one joynt lessee for years to his companion shall be good before entry, 270 b †.

Two grantees of the next avoidance a release by the one to the other before the Church voids, good, secus after, 270 b †.

Where a release to a tenant at will shall be good to enlarge his estate, secus to a tenant at sufferance, 270 b * ¶ 271 a †.

Where upon a feoffment in trust the feoffor occupy and take the profits, a release to him by the feoffees shall be good 271 a ¶ b 272 a b †.

What shall be said a sufficient privity whereupon a release may enure by way of enlargement of the estate, and what not, 272 b ¶ 273 a per tot. pag.

In what release words of limitation are requisite to the passing of an inheritance, and in what not, 273 b † * 274 a ¶ b ¶ 275 a † 280 a *.

Where a feme covert is tenant for life a release to the husband and his heirs shall be good, 273 b * 299 a ¶.

Where a release to tenant by statute merchant, &c. or gardein, which hold over for the value shall be good to enlarge their estates, 273 b *.

Lesse for ten years, the remainder for twenty years, by the release of him in the remainder to the lesse he shall have for thirty years, 273 b *.

What privity requisite to a release which enure by way of mitter lestate, 273 b ¶.

Where & to what purposes the release of one Joyntenant to his companion shall enure by way of mitter lestate, and where, and to what not, 273 b ¶.

Where the release of one Coparcener of a rent shall enure to the other by way mitter lestate, albeit her moity be in suspence. Et sic è converso, 273 b ¶.

Where one Coparcener of a rent marry the tertenant, and the other release to the husband and wife, how it shall enure, quære ibid,

Where a release of a right upon condition shall be good, secus of a condition upon condition, 274 b † vide tit. Conditions.

Where lesse for years is ousted, and he in the reversion disseised by the release of the lesser to the disseisor, the disseisee may enter, secus in case of a lease for life, 275 b ¶ 267 a †.

Where a release by one whose entry is lawful to him that is in by wrong shall purge and take away all mean estates and titles, secus where his entry is not lawful, 266 b † * 277 a † * b ¶ 278 a †.

Where a release to the feoffee of lesser for life or the disseisor shall exclude the disseisor of his entry, 276 b ¶.

Where a release to one feoffee of such lesser shall bar the disseisor as to both, 277 a †.

Where the feoffee of a disseisor upon condition make a feoffment over, a release by the disseisee to the second feoffee shall extinct the condition, secus of a release to the first feoffee, 277 b *.

Where the release of the disseisee to a disseisor to the use of another shall take away the agreement of Cestuy que use, 277 b ¶ vide tit. Relation.

Where two disseisors release to their disseisor, and after disseise him, the release of the disseisee to one or both of them shal not exclude the second disseisor to re-enter, 278 a *.

To what purposes the release of the disseisee to one disseisor shall be said to enure by way of entry and feoffment and to what not, 194 b † 278 a ¶ b †.

Where acts done to or by the disseisor shall not be avoided by the alteration of his estate, by the release of the disseisee, 278 a † * b †.

Where an alien disseisor is endenized by the release of the disseisee to him the King shall not have the land, secus if he were the feoffee of a disseisor, 278 b †.

Where the Lord disseise his tenant and is disseised, the release of the tenant to the second disseisor shall not revive the seignior, secus if the Lord and a stranger had disseised the tenant, and the disseisee released to the stranger, 278 b *.

Where a release shall be said to enure totally by way of extinguishment, and where only as to some purposes, 279 b * ¶ 280 a † 313 b *.

Where a release to one Joyntenant shall enure to his companion, and where not, 194 a † b *.

Where a release by one Joyntenant or Parcener to his companion shall be good, and where not, and how such release shall enure, 193 a ¶ b per tot. pag. 318 a †.

Where the feme mesn and the tenant entermarry, and the Lord paramount release to the husband and wife, how it shall enure, quære, 280 a *.

Where a release which enures by way of extinguishment may admit of a limitation, and where not, 280 a *.

Where by the release of the Lord to his tenant of all his right in the land, the seignior shall be extinct without words of inheritance, 280 a *.

Where one release shall enure to extinguish several rights in one and the same land, 280 a *.

Where the release of the Lord of all his right to the tenant, and a lesse for years of the seignior shall extinguish the seignior and state of the lesse also, secus of a release to them and their heirs 280 a *.

Where a rent may be reserved upon a release, and where not, vide tit. Reservation.

Where by a release of all actions, causes of actions shall be released, vide tit. Action.

Where in mixt actions a release of all actions real or personal shall be a good bar, 281 a † ¶ b †.

Where in an Assise by three Joyntenants a release of actions personal by one to the disseisor shall not bar his companions, 285 a ¶.

Where in a writ of ward by two, a release by one to the defendant shall enure to the benefit of his companion for the whole, 285 a ¶.

Where a release of actions personal shall be a good bar in actions real where damages are to be recovered, and where not, 285 a † ¶ b †.

Where a release of all actions to the disseisor or his tenant for life shall not extend to his feoffee, or him in the remainder, 275 b * 285 b ¶ 286 a ¶.

Where such release shall not prejudice the heir of the disseisee of his action after the death of his Ancestor, 285 b ¶.

The Table.

Where a release of actions reals shall be available only to the tenant, 285 b * 286 a †.
Where a release of all actions shall bar a right, and where not, but the party notwithstanding may enter or seise, 286 a * ¶ b † *.
Where a release of actions real before the Statute of uses was a good plea by the privor of the profits, 287 a †.
Where a release of all actions, appeals, or demands, shall be a good bar in an appeal of death, secus of a release of all actions real and personal, 287 b † ¶ 288 a † * 291 b † *.
Where a release of actions personal shall be a good bar in an appeal of Mayhem, 288 a ¶.
Where a release of all actions shall be a good plea in a writ of error or attaint, and where not, 288 b ¶ 289 a †.
What shall be said a good release to bar an execution, and what not, vide tit. Execution.
By a release of demands what things are released, 291 a 292 a † 392 b ¶.
Where by a release of quarrels all actions and causes of action are released, 292 a *.
Where a release of all actions shall discharge an obligation before it be broken, secus of a Covenant, 292 b † *.
Where by a release of all actions a rent at a day after or an annuity not behind is not released, 292 b * ¶.
A release by the Lord paramount to the tenant to hold by lesser services, void, vide tit. Confirmation.
Where he in the remainder in tail releaseth to the tenant for life in possession all his right what shall pass, 345 b ¶ vide tit. Waste.

¶ Relief.

Relief what, and whence derived, 76 a * 83 a ¶ b †.
What the relief of a Knight and each Noble man was by the common Law, and what now by the Statute, 76 a * ¶ 69 b † 83 b † vide stat. Mag. Charte. 2.
The relief of the tenant which holdeth by the entire fee of a Knight moity or third part, 83 a ¶ b † 106 a ¶.
The remedy which the Lord hath for his relief, and where an action of debt lyeth for relief, and where not, 83 a ¶ vide tit. Debt.
Where the Lord by Knights service shall have both wardship and relief of the same heir, and where neither, 83 b ¶.
Where the heir within age shall pay relief, and where not, ibid.
Where the successor of an Abbot or Bishop shall pay relief, and where not, 84 a † 99 a †.
Where the Lord shall have relief of the heir enfeoffed by collusion, 84 a †.
The relief of a tenant in Socage, 90 b ¶ 91 a †.
Where the rent is ten shillings, or a pair of spurs, what relief shall be payed, and who shall have the election, 90 b ¶ 91 b †.
Where the rent is not annual what relief shall be paid, 91 a †.
At what time the relief of such tenant shall be due to the Lord, and where the Lord shall not distrain till a certain time, 91 a ¶ 92 a †.
Where the heir of Cestuy que use shall pay relief, 91 a *.
Of what service a relief shall be due, and of what not, 91 b ¶ 93 a *.
The relief of the tenant by grand Serjeanty, vide tit. Serjeanty.

¶ Remainder.

Remainder what, and whence derived, 49 a ¶ 143 a *.
Where it shall pass without deed, 49 a ¶ 143 a †.
Where a remainder may depend without a particular estate, 298 a *.
Where the defeating of the particular estate shall defeat the remainder, and where not, 298 a *.
A rent granted to the tenant for life the remainder in fee, a good remainder, 298 a *.
Where a rent is granted pur autem vy, the remainder in tail to Cestuy que vy, a good remainder, 298 a * vide tit. Instant.
Where by the grant of a remainder a reversion shall pass 299 b *.
Where a remitter to the particular estate shall be a remitter to the reversion or remainder, vide tit. Remitter.
Where the execution of the particular estate upon a fine sur grant & render shall be an execution of the remainder, 353 b *.
Where a remainder not vesting at the time of the particular estate created by livery, shall be good, and where not, 264 a † 377 b * 378 a.
Where a mean remainder or reversion shall be an impediment to bring an action of waste, and where not, vide tit. Waste.
Where a remainder limited upon a gift in frankmarriage shall destroy the frankmarriage, and where not, 21 b *.
Where a remainder is limited to the right heirs of the particular tenant, it shall be said to vest in him presently, and where not, vide tit. Heir.
Where a remainder for years upon an estate for life shall be good to the same party, 54 b ¶.
By what means a remainder vested in the King shall be devested, vide tit. Entry Congeable, Prærog. & Remitter.
Where a release to the particular tenant shall enure to him in the remainder, & e contra, and where not, vide tit. Releases.
Vide tit. Reversion.

¶ Remitter.

The Etymology and description of a Remitter, 347 b *.
The incidents to a Remitter, 348 a †.
Where a remitter shall operate upon a freehold in law descended before entry, 348 a ¶.
Where tenant in tail disseise his discontinuee, his issue shall be remitted notwithstanding the infancy or coverture of the discontinuee, 348 a ¶.
Where tenant in tail infeoffe his issue within age, he is remitted, secus of a use limited to him upon a feoffment, 348 b † * 350 b † 351 b ¶.
What charges by the issue shall be avoided by a remitter, and what not, 349 a * vide tit Charge.
Where a remitter to the principal shall be a remitter to the accessary, vide tit. Appendant.
Where a remitter shall not be to the appendant before recontinuance of the principal, vide ibid.
Where an Usurpation shall work a remitter, 194 a *.
Where the issue in tail within age enter, or entermary with the discontinuee, he is remitted, secus if of full age, 102 b † 350 b * ¶.
Where a right without an action, or an action without a right shall work no remitter, 348 a † * 349 b † 356 a †.

The Table.

¶ Where tenant in tail ſuff. r an erroneous recovery, and diſſeiſe the recoveroz, and dye, his iſſue is not remitted, 349 b *.

¶ Where a ſtranger uſurp upon a purchaſoz of an advow.on, and grant to him in fee, who dye, his iſſue is not remitted, 349 b *.

¶ Where a moity of the lands diſcontinued deſcending upon the iſſue in tail ſhall be a remitter only foz the ſame moity, 350 a †*.

Where tenant in tail enfeoffe his iſſue within age, and a ſtranger, no remitter to the iſſue, but foz a moity, 350 a ¶.

¶ Where the husband diſcontinue, and retake to himſelf and his wife during his life, the feme is remitted, 350 b ¶ 351 b * ¶.

¶ Where an infant oz feme covert ſhall be remitted againſt their deed indented, oz acceptance by fine, 353 a * vide tit. Fines.

Where upon a diſcontinuance by the husband by fine a grant and render to the wife ſhall be a remitter to her, albeit ſhe be no party to the writ, oz Conuſans, 353 a ¶.

Where baron and feme tenants in ſpecial tail levy a fine at the Common Law, and retake in fee, the feme is not remitted, but her iſſue upon the diſcent ſhall 353 b *.

Where the iſſue in tail of full age take husband, a leaſe to her and her husband by the diſcontinuee ſhall be a remitter, 353 b ¶ vide tit. Entry Congeable in caſe of a diſcent otherwiſe.

¶ Where a man ſhall be remitted againſt his own diſcontinuance and reprſal, 354 a †*.

Where a remitter to the particular eſtate ſhall be a remitter to all in the reverſion oz remainder 354 b †*.

¶ Where a remitter to the particular eſtate ſhall be a remitter to the reverſion notwithſtanding a mean remainder be barred during the diſcontinuance, 354 b *.

Where a remitter to the particular eſtate ſhall deveſt a remainder oz reverſion ſetled in the King during the diſcontinuance, ibid.

Where after a recovery by default againſt a feme a leaſe to her and her husband ſhall be a remitter to the feme, 355 a † 356 a †.

Where the diſcontinuee of the husband enfeoffe the husband and wife, and a ſtranger, the wife is remitted to a moity, 356 b †.

Where the diſcontinuee of the husband make a leaſe to the wife, the diſagreement of the husband ſhall not ouſt the feme of her remitter, 356 b ¶ 357 a †.

Where the wife being remitted during the coverture inapafter the death of her husband waive her remitter, and where not, 357 a †

Where tenant in tail to him and his heirs females diſcontinue, and retake in fee, and dye, having a daughter, the ſon born after ſhall not deveſt the remitter, 357 a *.

Where covin in the husband and wife to diſſeiſe the diſcontinuee, and enfeoffe them, ſhall hinder the remitter to the wife, 357 a ¶.

Where tenant in tail and his iſſue diſſeiſe the diſcontinuee to the uſe of the father who dye, the iſſue is not remitted againſt the diſcontinuee, albeit he be againſt all others, 357 b †.

Where one ioyntenant is of covin to diſſeiſe the heir of their diſſeiſoz and enfeoffe them, the other being not privy to the covin is remitted foz his part, 357 b *.

Where the husband diſcontinue and retake foz life the remainder to his wife, by the death of the husband the wife is remitted before entry, and cannot waive, 358 a * b *.

¶ Where a freehold in law accruing to the iſſue in tail oz diſſeiſee by ſurvivoꝛſhip, oz by reaſon of a remainder ſhall work a remitter, and where not, 358 b ¶ 359 a & b †

Where an Abbot oz Biſhop diſcontinue, and retake in fee by licence, the ſucceſſoz ſhall be remitted and defeat the mean charges, 360 a * ¶ b †.

Where a remitter ſhall be wrought by a matter in pais albeit the diſcontinuance groweth by matter of recoꝛd, 355 a † 356 a ¶ 361 b † *.

Where in a Formedon oz writ of entry the tenant plead non-tenure oz diſclaim by the entry of the iſſue in tail oz diſſeiſee, they are remitted before iudgment, 362 a ¶ 363 a ¶.

Where a claim in pais ſhall not hinder a remitter, ſecus of an Indenture, oz a claim of recoꝛd, 363 b ¶ 364 a ¶.

¶ Where a man of full age having a right of entry take an eſtate he is remitted, ſecus of a right of action, 363 b † 364 a † *.

Where a remitter to one ioyntenant ſhall be a remitter to his companion, and where not, 364 b * vide tit. Entry Congeable & Joyntenants.

Where a ſuſpended warranty and aſſets deſcending upon the iſſue in tail ſhall hinder a remitter, vide tit. Warranty.

¶ Rents.

THe derivation of the woꝛd, 141 b ¶.

The diviſion of Rents, ibid.

Rent ſervice, what 87 b † 141 b ¶ 142 b †.

Such rent diſtrainable of common right, 142 a † b †

How ſuch rent may become ſeck, 150 a ¶ b † ¶ 151 a †.

To what purpoſes ſuch rent become ſeck ſhall be ſaid to participate of the nature of a rent ſervice, and to what not, 150 b * 153 a † * 154 b * 309 b ¶.

Out of what things a rent may be granted oz reſerved, and out of what not, 47 a † 142 a * 144 a * ¶.

Where a rent ſervice may be ſuſpended in part and in uſe foz part, and where not, vide tit. Suſpenſion.

Where by purchaſe oz diſcent of parcel of the tenancy to the Lord an entire rent ſervice ſhall be extinct, and where not, vide tit. Extinguiſhment.

What things incident to a rent ſervice, vide tit. Pealty, & tit. Appendant.

Where a tenure being by homage, fealty, and rent, by a recovery oz grant of the rent the homage and fealty ſhall paſs, and where not, 151 a *.

Rent charge, what, 143 b * 144 a *.

Where a grant to diſtrain ſhall amount to a rent charge, 146 b ¶ 148 a † 308 a ¶ b ¶.

Where woꝛds in a grant ſhall amount to a rent charge, albeit there be no expreſs woꝛds of charge oz diſtreſs, 147 a †.

¶ Where in the grant of a rent a proviſo not to charge the perſon of the grantoz ſhall be good, and where not, 146 a per tot. pag.

Where in ſuch a grant a proviſo not to charge the land ſhall be void, 146 a ¶.

¶ Where the perſon of the grantoz ſhall be charged with a rent charge, notwithſtaning a proviſo to diſcharge his perſon, 146 b †.

¶ What act ſhall be ſufficient to determine the election of the grantee of a rent charge to make it a rent oz an annuity, and what not, vide tit. Annuity.

¶ Where the determination of the rent charge ſhall be a determination of the annuity, and where not, vide ibid.

Rent ſeck, what, and whence ſo called, 143 b ¶ 144 a ¶.

The Table.

Where a rent is granted out of one Manor with a clause of distress in another what rent it shall be, and how construed, 147 a per tot. pag.

Where a rent is granted out of two acres, with a clause of distress in one, or to two persons with a distress to one, in rent it shall be construed, 147 b †.

Where the same rent may be both charge and seck diversis temporibus, 147 b †.

Where a rent in fee is granted out of lands in fee and a term for years, or solely out of a term for years, how it shall be construed, ibid.

Where a man seised of twenty acres grant a rent of 20 s percipiend. de qualibet acra, how it shall be construed, 147 b * 267 b * vide tit. Grant.

Where the bargainor and bargainee joyn in the grant of a rent, how it shall be construed before, and how after inrolment, 147 b * vide tit. Confirmation.

Where a rent granted for owelty of partition shall be good without deed, secus of a rent for owelty of Exchange, 169 a ¶.

Where a man may have a rent by prescription, 144 a ¶.

What shall be said a sufficient seisin of a rent seck to have an Assise, and what not, vide tit. Seisin.

What real actions lye for the recovery of a rent charge or seck after seisin, 160 a ¶.

What shall be said a disseisin of a rent service, charge, or seck, and what not, vide tit. Disseisin.

Where money given in seisin of a rent before the day shall not be abated out of the rent, 315 a †.

Where a rent seck may be part of a Manor, secus of a rent charge, vide tit. Manor.

By what means a rent may be discontinued, and by what not, vide tit. Discontinuance.

For apportionment of rents, vide tit. Apportionment.

Vide stat. 32 H. 8 cap. 37 which giveth remedy for recovery of arrearages of rents where the common law was deficient.

Vide tit. Reservation.

¶ Replevin.

The Etymology of the word (Replevin) 145 b †. 161 a *.

Where such writ lyeth, ibid.

How many ways goods may be replevied, 145 b †.

Where a Replevin brought by him that had no property in the goods at the time of the taking shall be good, and where not, 145 b †.

Where a man may have a replevin of goods not distrained, 145 b *.

The several pledges the Sheriff ought to take in a replevin, 145 b †.

Where a Replevin lyeth notwithstanding a grant to keep the goods distrained against gages and pledges 145 b ¶.

Where a Replevin lyeth notwithstanding the property once tryed and found for the defendant, 145 b *.

Where the beasts of several men are taken they shall not joyn in a Replevin, 145 b ¶.

In a Replevin property to the Plaintiff and a stranger, or where there be two Plaintiffs property to one of them a good plea, ibid.

Vide stat. Marlebrige cap. 22.

Report, what, and whence derived, 293 a ¶.

¶ Request.

What shall be a sufficient request by the wife to entitle her to damages in a writ of Dower, and what not, 32 b ¶ vide tit. Dower.

Where an estate is to be made upon request by force of a condition, by whom, when, and where such request ought to be made, 220 a * ¶ vide tit. Conditions.

Vide tit. Demand.

¶ Resceit.

The Etymology and signification of the word, 192 b * 352 b ¶.

Where lessee for years tenant by stat. merchant &c. shall be received in default of him in the reversion or remainder to save their term, and where not, vid. stat. Glocest. cap. 11.

Where in default of the husband the wife shall be received to defend her right, vide stat. W. 2 cap. 3.

Where a feme being received shall plead, and advantage shall be taken against her as a feme sole, and where not, 358 a †.

Where in an action of wast against the husband and wife upon the default of the husband the wife shall be received, 355 a ¶ b †.

Where he in the reversion shall be received upon the default of tenant for life, albeit the statute speaketh of a remainder, 356 a * vide stat. W. 2 c. 3.

¶ Rescous.

The description and derivation of Rescous, 160 b †.

Where the Chattel distrained go into the house of the owner, the not delivery of them shall be esteemed in law a Rescous, 161 a †.

Where the owner may make Rescous of a distress taken without cause, and where not, 47 b † 160 b ¶ 161 a † *.

Where Rescous shall be a disseisin of a rent service, and where not, 160 b ¶ 161 a ¶.

Where the Lord distrain his tenant in the highway within his fee, the tenant may make Rescous, 161 a †.

Where the tenant may make Rescous upon a distress of the Lord taken out of his fee, and where not, 161 a † *.

Where the party not guilty may make Rescous upon an arrest of the Sheriff for felony, and where not, 161 a *.

¶ Reservation.

The derivation of the word, 142 b ¶.

What shall be said good words of Reservation, 47 a † 144 a †.

The difference between an exception and a reservation, 47 a †.

Out of what things a rent may be reserved, and out of what not, vide tit. Rents.

To what person the Reservation ought to be made, and where it shall be good to a stranger to the land, and where not, 47 a * 143 b ¶ 213 a & b.

Where a Reservation to his heirs without any thing

The Table.

thing to the party himself shall be good, and where not, 99 b † 213 b † ¶ 214 a †.
Reservation to a man or his heirs how it shall be construed 214 a †.
Where a rent reserved to one Joyntenant shall be good also to his companion, and where not, 47 a * 191 a * 214 a † 318 a * vide tit Joyntenants.
Where a Rent is reserved generally to what persons it shall extend, 47 a *.
Where the special reservation of the party shall destroy the general intendment of the law, 23 a * 47 a * 305 b ¶.
What things the Lord may reserve for rent, and what not, 91 b * ¶ 142 a *.
Upon what estate a rent service may be reserved at this day, and upon what not, 142 b 143 a.
Where a rent reserved upon a bargain and sale shall be good, 144 a *.
Where a rent may be reserved upon a release, and where not, 193 b ¶.
Where a reservation shall amount to a grant, and where not, 170 a † 143 b † 144 a † vide tit. Annuity.
Where tenant for life and he in the reversion joyn in a lease for life reserving a rent, how it shal enure, 214 a.
Where the Lord release to his tenant by fealty and rent saving or reserving to him his rent, what rent it shall be construed, 150 a ¶.
Reservation at Michaelmas and our Lady day upon a lease made in February, shall be construed at our Lady day and Mich, 217 b †.
Reservation of a new service upon a confirmation or release to the tenant void, vide tit. Confirmation.
Where an entry for condition broken cannot be reserved to a Stranger, 214 b ¶ vide tit. Conditions.
Vide tit. Rents.

¶ Resummons.

The nature of such writ, and where it lyeth, 135 b †.
The several kinds of resummons, ibidem.
Where after judgment that the tenant shall go without day, the Plaintiff may recontinue the cause by a resummons or reattachment, and where not, 135 b † 363 a †.

¶ Retraxit.

A Retraxit what and how it differeth from a Nonsuit and Departure, 138 b ¶ 139 a †.
The several sorts of Retraxit, and the form of entring them, 139 a †.

¶ Reve.

The Signification & derivation of the word, 61 b ¶
The office and duty of a Reve, 62 a †.

¶ Reversion.

The Etymology of the word, 142 b *.
The description of a reversion, 22 b †.
What things incident to a reversion, and shall pass by grant of the reversion, vide tit. Appendant.
Where an use after divers particular estates is limited to the right heirs of the feoffor, it shall be said in him as a reversion, 22 b *.
Where a man make a gift in tail or lease for life the remainder to his right heirs it shall be in him as a reversion, 22 b ¶.
Where a feoffment is made to the use of the feoffor in tail, and after to the feoffee in fee, the feoffee hath no reversion, ibidem.
What reversion shall be accounted assets, and what not, 173 a †
Where a reversion upon an estate tail shall be a sufficient continuance of privity between parceners to take advantage of a warranty or condition in law, 174 b †.
Vide tit. Remainder.

¶ Reviver. vide tit. Extinguishment Revocation.

Where a condition or power to revoke uses shall be good, and what revocation shall be good, and what not, vide tit. Uses.
By what acts a power to revoke uses shall be extinct and defeated, and by what not, 237 a * 265 b †.
Where a power of revocation may be apportioned, and where not, 237 a *.
Where the King may revoke his presentation before induction, vide tit. Prerog.

¶ Right.

The signification and extent of the word (Right) 158 b 265 a † 345 a ¶ b †
The several kinds of right, 266 a 345 b †.
Common right what, and how taken, 142 a ¶.
Where the law more respecteth a leise estate by right than a greater by wrong, 42 b †.
A right cannot dye, 279 b † vide tit. Releases.
The several natures of writs of right, 158 b ¶.
Where in such writ the demandant ought to alledge seisin within time of limitation, secus in case of the King, 294 a † b †.
The several times of limitation in a writ of right, 114 b ¶ 115 a †.
By what means a future right may be barred, and by what not, 265 a ¶ b †.
Where a right shall remain, notwithstanding a release of actions, vide tit. Releases.
Where a recontinuance of a right of possession out of the hands of him that hath the absolute right shall draw with it the mere right to the land, and where not, 166 a * ¶ 278 b ¶ 279 a † * 283 b * ¶.
Where in a writ of right the mere right shall be pleaded before the right of possession, 279 a † b † 283 b † 284 a †.
Where a writ of right lyeth for a rent, 160 a ¶.
What shall be said a sufficient claim to maintain a writ of right, and what not, 280 b ¶ 281 a per tot. pag 293 a † *.
What Corporation may maintain a writ of right, and what not, vide tit. Corporation.
Where judgment final shall be given in such writ, albeit the grand assise give not their verdict upon the meere right, 295 b †.
The form of the judgment in a writ of right, ibid.
Within what time claim ought to be made for the avoidance of such judgment, 254 b ¶ 262 a *.

¶ Riot.

What number of persons may commit a riot, 257 a ¶ vide tit. Forcible entry.

The Table.

¶ Robbery.

The acception and derivation of the word, 288 a *.
What shall be said a good plea in an appeal of robbery, vide tit. Appeal.
Ruscaria, quid, 5 a †.

SAliva, quid, and what shall pass in a grant by that name, 4 b *.

¶ Scire facias.

Such writ whence so called, and where it lyeth, 290 b. vide stat. W. 2 cap. 45.
A release of actions a good bar in a Scire facias, 290 b ¶ 291 a †.
Where and upon what judgment the tenant having a warranty, and a recovery being had against him shall have a Scire facias upon assets descended after, and where not, 366 a *.
Where in such writ the tenant shall recover the land lost, and where the assets descended, 366 a *.
Where upon eviction of lands, &c. in execution, a Scire facias lyeth to extend other lands, &c. and where not, vide stat. 32 H. 8 cap. 5.
Scutagium, quid, 68 b * 75 a †.

¶ Seales.

The antiquity of sealing of Charters, 7 a *.
When sealing with arms began, ibid.
Inheritances passing under the great seal of England shall be descendible according to the common law of England, 9 a *.
Under what seal a protection shall be allowed, and under what not, vide tit. Protection.

¶ Seisin.

The signification of the word, 153 a *.
The several sorts of seisins, 29 a †.
Where a seisin of parcel shall be a sufficient seisin in law to have an assise for the whole, 153 a * 315 a *
What shall be said a sufficient seisin of a rent to have an assise, & what not, 159 b ¶ 160 a * 314 b ¶ 315 a †.
Where seisin of a rent by the Lord before his feoffment of the Mano, shall not enable him to bring an assise after entry for a condition broken, 202 b † vide tit. Conditions.
To what purposes the seisin of a rent shall be a seisin of the reversion, and to what not, 15 a *.
Where seisin of a rent by the hands of one Joynt-tenant shall be good for all, 315 a *.
Where the seisin of homage or fealty shall be a seisin of all other services, 68 a ¶.
What shall be a sufficient seisin in the husband to entitle the wife to Dower, vide tit. Dower.
What shall be a sufficient seisin in the wife to entitle the husband to be tenant by the Curtesie, vide tit. Curtesie of &c.
What seisin shall be sufficient to make a possessio fratris, and what not, vide tit. Possession.
What shall be a sufficient seisin by the Lord to vest in him the lands &c. of his villain, and what not, vide tit. Villinage.
What shall be a sufficient seisin by a bastard during his life to bar the mulier after a divorce, and what not, vide tit. Bastardy.
V. de Stat. 32 H. 8 c. 2 of limitations concerning the seisin of rents, &c. and what actions and services shall be said within this Statute, and what not.
Selda, quid, 4 b *.
Selio terræ, quid & unde, 5 b ¶.

¶ Sequatur sub suo periculo.

Such writ whence so called, and where it lyeth, 101 b ¶.

¶ Serjeanty.

The description of tenure by grand Serjeanty, and why so called, 105 b †.
How it differeth from Escuage, 105 b ¶ 106 a ¶ 4 b
The special properties of this service, 105 b ¶.
The holding by what offices shall be said grand serjeanty, 106 a † *.
Where tenure by Cornage shall be grand serjeanty and where not, 107 a †.
The relief of a tenant by grand serjeanty, 106 b †.
Where such tenant may make a deputy, and where not, 107 a *.
Tenure invenire hominem ad guerram infra 4 maria grand serjeanty, ibid.
What persons are capable to perform this service in person, and what not, 107 b per tot. pag.
The incidents and fruits of this service, 108 a †.
Tenure by petit Serjeanty described, 108 a *.
Such tenure but Socage, ibid.

¶ Services.

Servitium, quid & quotuplex, 65 a †.
What said to be forein service, 68 b ¶ 69 b * 74 b.
What services be incident to other, and shall pass by grant of other, vide tit. Appendant & Feal y.
Where a Corporal service may be performed by Deputy, and where not, 70 a b 83 a ¶ 107 a * b †.
By purchase or descent of part of the tenancy to the Lord where and what services shall be extinct or apportioned, and where and what not, vide tit. Apportionment & Extinguishment.
What Corporal services may become seck, and what not, 151 a † ¶.
By grant of the services of tenant in tail what shall pass, vide tit. Grants.
Where a seisin of one service shall be a seisin of all other services to make an avowry, vide tit. Seisin.
Vide tit. Fealty, Homage, Knights services, Rents & Tenure.
Shawe, quid, 4 b ¶.

¶ Sheriff.

The Etymology of the word, 109 b ¶ 168 a *.
Whence called vicount, 168 a *.
His office and duty, ibid.
The antiquity of this office, and how called anciently, 168 a ¶.

The Table.

How the Sheriff ought to demean himself in executions by Elegit &c. vide tit. Execution & Stat. W. 2. c. 18.
The derivation of the word (Shire) 50 a † 168 a *.
From what antiquity this Kingdom divided into Shires, 168 a ¶.
County whence so called, 50 a †.
Simony how odious in law, 17 b * 89 a † 344 b
* vide Stat 31 Eliz. cap. 6.

¶ Socage.

The Etymon of the word, 86 a † b †.
Tenure in Socage described, 85 b †.
How such tenants were anciently called, 86 a †.
What tenure which is not Knights service shall be said a tenure in Socage, and what not, 86 a * ¶ 87 a
Where tenure by Escuage shall be Knights service, and where Socage, vide tit. Escuage.
The relief of a tenant in Socage, vide tit. Relief.
What things incident of common right to such tenure, 91 a †.
What person may be capable of a gardenship in Socage, and what not, 88 b †.
Where a gardein in Socage shall have a ward by cause of ward, 88 b †.
Where the next cosen of part of the mother shall be gardein in Socage before the next of part of the father, & è converso 22 a † 88 a ¶.
Where two are in equal degree of Affinity to the heir, which shall be gardein in Socage, 88 a *.
Where he shall not be gardein to whom there may be any possibility of discent, 88 b †.
The difference between the common and civil law in that point, 88 b *.
Where such gardein cannot forfeit or dispose of his interest, 88 b ¶ 89 a †.
Where he shall not present to the benefice of the heir 17 b * 89 a †.
At what age the heir shall have an account against gardein in Socage, 89 a † vide Stat. Marlebr. c. 7.
For what things he shall be accomptable, 88 a 89 b *
What allowances he ought to have upon his accompt, 89 a *.
Where upon such accompt no Capias lyeth against the Gardein, 89 a *.
Where a stranger shall be charged as Gardein in Socage, 89 b ¶.
Where the Gardein occupying after the heir accomplish his age of 14 shall be charged in an accompt as baylif, 90 a *.
Sckemans, & Sokmanni qui 5 b * 86 a †.
Solinum, & solinus terræ quid, 5 a ¶.

¶ Summons & Severance.

Summons what and whence derived, 198 b *.
The several kinds of Sommons, and by what persons it ought to be made, ibid.
Severance what, and the divers sorts of severance, 139 b †.
Where in a detinue of Charters, Summons, and Severance lyeth, vide tit. Detinue.
Stadium, terræ quid, 5 b †.
Stagnum, quid, and what shall pass by that name, 5 a ¶.
Staulawe, quid, 4 b ¶.

¶ Statutes.

¶ Magna Charta edit. Anno 9 Regis H. 3.

The divers appellations in law of this statute, 81 a †.
The several times it hath been confirmed, 81 a ¶.
No other but a Confirmation of the common law, 81 a * 115 b *.
Judgment of statute against this Charter void, 81 a ¶.
Oddly said to be made 20 H. 3 when in truth it was 9 H. 3 43 a ¶.
Magna Charta cap. 2. Of Reliefs, 76 a * ¶ 83 b † * 106 a ¶.
Magna Char. cap. 4. Of waste 53 b *.
Magna Char. cap. 7. Of Quarentines, 32 b *.
Magna Char. cap. 11. Of Common pleas, 71 b *.
Magna Char. cap. 20. Of Castlegard, 70 a *.
Magna Char. cap. 28. Of wager of law. Who said to be Balinus within this Stat. 168 b †*.
Magna Char. cap. 32. Of alienation of part of the tenancy, 43 a *.
Magna Char. cap. 36. Of Mortmain, 2 b *.

¶ Merton, edit. 20 Regis H. 3.

Merton cap. 1. Of Dower, 32 b *.
Merton cap. 3. Of Redisseisin, 154 a & b.
Merton cap. 5. Of usury against an Infant, 246 b *.
Merton cap. 6. Of Wards, 76 a ¶ 80 a 81 a.
Merton cap. 8. Of Limitation, 114 b ¶ 115 a †.

¶ Marlebrige edit. 52 Regis H. 3.

Marlebr. cap. 17. Of Wards. What shall be the Legitima ætas within this Stat for the heir to have an account against Gardein in Socage, 89 a †.
Marlebr. cap. 22. Of Repleuins, 145 b *.
Marlebr. cap. ult. Which giveth a writ of Entry in the post, 238 b ¶ 239 a †.

¶ West. 1 edit. anno 3 Regis E 1.

Westm. 1 cap. 13. Of Rapes, 123 b ¶.
Westm. 1 c. 21. Of waste by Gardeins, 53 b *.
Westm. 1 cap. 26. Of Extortion, 68 b † *.
Westm. 1 cap. 36. Of Ayde pur file marier & fair fits Chivaler, 102 b *.
Westm. 1 cap. 38. Of Limitation, 114 b ¶ 115 a †.
Westm. 1 cap. 40. Of Counterplea of Voucher, 385 a ¶ b †.

¶ Glocester edit. anno 6 Reg. E. 1.

Glocest. cap. 1. Of Dammages, 359 b ¶ 360 a †.
Glocest. c. 3. Of Collateral warranties, and the exposition of the several parts of this Stat 365 a ¶ b † * 366 a 381 a ¶ & b 382 a & b 383 a & b †.
Glocest cap. 5. Of waste, 53 b 54 b 200 b * 247 b * 355 b †.
Glocest c. 6. Of Mordancester given to the heirs of several degrees from the common Ancestor, 164 a ¶.
Glocest cap. 11. Of Receit of tenant for years, &c. and its exposition, and to what persons it extendeth, 46 a † * vide Stat. 21 H. 8 cap. 15.

The Table.

¶ De Religioſis edit. anno 7 Regis E. 1.

De Rel. cap. 1. Of Mortmaine, 2 b *.

¶ Acton Burnel edit. anno 11 E. 1.

Acton Bur. cap. 1. Of Recognizance. 289 b *.

¶ Weſtm. 2 anno 13 Reg. E. 1.

Weſtm 2 cap. 1. De donis Conditionalibus, and what alienations are reſtrained by this Statute, and what not, 18 b ¶ 19 a 24 a ¶ 223 b ¶ 224 a † 262 a ¶ 327 b † *.
The occaſion of making this Statute, and the commendation of the makers thereof, 19 a † 392 b †.
Weſtm. 2 c. 3. Of Cui in vita, and the Reſceit of Femes, 286 a 352 b ¶ 353 a † 355 a ¶ b * 356 a *.
Weſtm. 2 cap. 4. Whitby giveth a Quod ei deforceat, and the expoſition of it, and to what perſons and actions it extendeth, 331 b * 354 b ¶ 355 a & b 356 a †.
Weſtm. 2 cap. 5. Of Quare Imp. and Darrein præſentment, 344 b †.
Weſtm 2 cap. 9. Of Foreſtaller of Weines, and to what perſons this Stat. extendeth, and to what not, 100 a ¶ b †.
Weſtm. 2 cap. 12 Of Auditors and Account, 89 a * 295 a ¶.
Weſtm. 2. cap. 13. Of Appeals, 139 b * 289 a ¶.
Weſtm 2 cap. 18. Of Elegit and Executions, and how the Sheriff ought to demein himſelf therein, 289 b † *.
Weſtm. 2 cap. 21. Of Ceſſavit, 154 a †.
Weſtm. 2 cap. 23. Of Waſte by Joyntenants and Tenants in common, 200 b *.
Weſtm. 2 cap. 24. Of a writ of entry in Conſimili caſu, 54 b †.
Weſt. 2 cap. 26. Of double Damnages in a Reddiſeiſin, 154 a *.
Weſtm. 2 cap. 38. Of Jurors, 158 a †.
Weſtm. 2 cap. 39. Of Ravishment of ward, 136 b ¶.
Weſtm. 2 cap. 45. Of Execution by Scire facias after the year, 291 a †.

¶ De Mercatoribus edit: anno 13. Reg. E. 1.

De Mercat c. 1. Of Recognizance and the expoſition of the parts of this Statute, 289 b * 290 a * ¶.
Anno 18 E. 1. Quia emptores terrarum, 43 b * 98 b. 143 a *.
Anno 28 E. 1. Artic. ſuper Chart. cap. 9. Of Jurors, 158 a †.

¶ Statut. edit. tempore Regis E. 3.

Anno 1 E. 3. cap. 12. Of Alienations without licence, 43 b †.
Anno 25 E. 3. cap. 19. Of Protections, quia indebit, 131 b *.
Anno 31 E. 3. cap. 11. Of Adminiſtrators, 133 b *.
Anno 34 E. 3. cap. 15. Of Alienations without Licence, 43 b †.
Anno 34 E. 3. cap. 16. Of Non claim, 262 a †.
Anno 36 E. 3 cap. 15. Of Counts not abating for want of form, 304 b * vide tit. Pleadings.
Anno 38 E. 3. cap. 4. Of Obligations in the third perſon made void, and to what bonds conſtrued to extend, and to what not, 229 b ¶ 230 a †.

¶ Statut. edit. temp. Reg. R. 2.

Anno 1 R. 2 cap. 9. Of Feoffments for maintenance, 369 a †.
Anno 2 R. 2 cap. 10. Of Aſſiſes in Confinio Comitatus, 154 a †.
Anno 9 R. 2 cap. 2. Of Villains, 124 b ¶ 125 a.
Anno 12 R. 2 cap. 2. Of placing Officers of Juſtice, 134 a ¶.
Anno 13 R. 2 cap 16. Of Protections, 131 b †.
Anno 16 R 2 cap. 5. Of Præmunire, 130 a †.

¶ Stat. edit. temp. Regis H. 4.

Anno 1 H. 4. cap. 6. Concerning grants by the King, and what perſons are reſtrained by this Act, and what not, 133 a ¶.
Anno 2 H. 4 cap. 7. Of Nonints, 139 b †.
Anno 4 H. 4 cap. 17. Of Age to enter into Religion, 137 a †.

¶ Stat. edit. temp. Regis H. 5.

Anno 2 H. 5 cap. 3. Of Juroſs, and how expounded by equity, 272 a * b ¶ †.

¶ Stat. edit. temp. Regis H. 6.

Anno 8 H. 6 cap. 9. Of forcible entry, 257 b †.

¶ Stat. edit. temp. Reg. H. 7.

Anno 4 H. 7 cap. 7 Of the wardſhip of the heir of Ceſtuy que uſe, 84 b ¶.
Anno 4 H. 7 cap. 24. Of Fines, 262 a † 316 a * 372 a ¶ b †.
Anno 11 H. 7 cap. 20 Of Diſcontinuance of womens Joyntures, and what ſhall be ſaid an alienation of the wife within this Statute, and what not, 316 b * 365 b * ¶ 366 a † 381 a †.
Anno 19 H. 7 cap. 15 Of Aſſes, 91 a * 117 a ¶.

¶ Stat. edit. temp. Regis H. 8.

Anno 7 H. 8 cap. 4. Of Avowries by Recoverors, 104 b *.
Anno 21 H. 8 cap. 4. Of ſale of lands by Executors 113 a *.
Anno 21 H. 8 cap. 15. Of ſatisfying Recoveries by Leaſes for years, and of Avowries by the Recoverors, 46 a * 104 b * ¶.
Anno 21 H. 8 cap. 19. Of Avowries, and the expoſition of the ſeveral parts of the Statute, 268 b † * 312 a †.
Anno 23 H. 8 cap. 3. Of Attaints, 204 b * ¶.
Anno 23 H. 8 cap. 5. Of giving the ſpecial matter in Evidence by any officer Authoriſed by the Commiſſion of Sewers. 283 a ¶.
Anno 23 H. 8 cap. 8. Of Recognizance and Stat. Staple,

The Table.

ple, and the expoſition of the parts of this Statute, 289 b * 290 a * vide Stat. 32 H. 8 cap. 5.

Anno 26 H. 8 cap. 13. Of forfeiture of lands for Treaſon, 372 b † 392 b *.

Anno 27 H. 8 cap. 10. Of Uſes, 187 b * 237 a * 272 a † 287 a *.

Anno 27 H. 8 cap. eod. Of womens Joyntures, and what ſhall be ſaid a good Joynture within this ſtat and what not, 36 b per tot. pag. vide tit. Dower.

An 28. H. 8. c. 15. Of trial before Commiſſioners for Pyracy, Robbery, &c. upon the Sea, 391 a * ¶.

An. 32 H. 8 c. 1 & 34 H. 8 c 5. Of wills & Wardſhips, and the expoſition of the ſeveral parts of theſe Statutes, 76 a ¶ 78 a per tot. pag. b † 111 b per tot. pag.

Anno 32 H. 8 cap. 2. Of limitations, and what actions and ſervices ſhall be ſaid within this Statute, and what not, 115 a †.

Anno 32 H. 8 cap. 5. Of Extents and Execution, and the expoſition of the ſeveral parts of this Statute, 289 b * ¶ b † *.

Anno 32 H. 8 cap. 7. Of Tithes, and the Remedy for them 159 a † *.

Anno 32 H. 8 cap. 9. Of maintenance, 369 a *.

What ſhall be ſaid a pretenſed right, or title within this Statute, and what not, 369 a *.

What perſons may buy or ſell a pretenſed right or title within this Statute, and what not, 369 a ¶ b †.

Of what eſtate ſuch pretenſed right may be, 369 a ¶ b †.

By what way or mean ſuch perſon may gain ſuch pretended right or title, and by what not, 369 b *.

Anno 32 H. 8 cap. 28 Of leaſes by tenant in tail, husband and wife, and Spiritual Corporations, and what things requiſite to the perfection of ſuch Leaſes, and what not, 44 a & b 333 a *.

Anno 32 H. 8 cap. eod. Of diſcontinuance of the wives eſtate by the husband, and the expoſition of the ſeveral clauſes in this branch of the Statute, 316 a per tot. pag.

Anno 32 H 8 cap. 31. Of recoveries ſuffered by tenants for life, 362 a † vide Stat. 14 Eliz. cap. 8.

Anno 32 H. 8 cap. 32. Of Partition between Joyntenants and tenants in Commons, and the expoſition of the parts of this Stat 169 a * 175 a ¶ b † 187 a *.

An. 32 H. 8 cap. 33. Of diſcents which take away entries, and the expoſition of the ſeveral parts of this Statute, 238 a * ¶ 256 a * vide tit. Entry Congeable.

Anno 32 H. 8 cap. 34 Of Conditions, and the expoſition of the ſeveral parts of this Statute, and what perſon ſhall take advantage of a Condition within this Statute, and what not, 215 a b †.

Anno 32 H. 8 cap. 36. Of Fines, 372 b ¶ vide Stat. 4. H. 7 cap. 24.

Anno 32 H. 8 cap. 37. Of remedy for the arrears of rents, and the expoſition of all the parts of this Statute, 162 a ¶ & b per tot. pag 351 b †.

Anno 32 H. 8 cap. 38. Of Mariages, 235 a *.

Anno 32 H. 8 cap 46 & 33 H. 8 cap. 21. Concerning the erection of the Court of Wards, 77 a ¶.

Anno 34 H. 8 cap. 5 Of Uſes and wards, vide Stat. 32 H. 8 cap. 1.

Anno 34 H. 8 cap. 20. Of Recoveries againſt tenant in tail, the reverſion or remainder in the King, and the expoſition of the ſeveral parts of this Statute, 335 a * 372 b * ¶ 373 a †.

Anno 35 H. 8 cap. 2. Of Trial of treaſon committed out of the Realm, 261 b *.

¶ Stat. edit. temp. Regis E. 6.

ANno 2 E. 6 cap. 6. Of Remedies for ſubſtraction of prædial Tithes, 159 a *.

Anno 2 E. 6 cap. 8. Concerning the finding of Officers, and the ſeveral benefits ariſing by the ſame Statute, 77 b per tot. pag. 243 a *.

Anno 3 & 4 E. 6 cap. 4. Of pleading a Conſtat or Inſpeximus of the Kings Letters Patents, 225 b * vide Stat. 13 Eliz. cap. 6.

¶ Stat. edit. temp. Reg. Eliz.

ANno 13 Eliz. cap. 6. Of pleading a Conſtat or Inſpeximus of the Kings Letters Patents, 225 b * vide Stat. 3 & 4 E. 6. cap. 4.

Anno 13 Eliz. cap. 10. Of Leaſes by Eccleſiaſtical Corporations, and the expoſition of the parts of this Statut 44 a & b vide Stat. 32 H. 8 cap. 28.

An. 13 Eliz. c. 15. Againſt fraudulent conveyances, &c. and how it ſhall be extended by equity, 76 a ¶ 290 b †.

Anno 14. Eliz. cap. 8. Of feined recoveries ſuffered by tenant for life, 280 b * 356 a ¶ 362 a † *.

Anno 18 Eliz. cap. 10. Of Leaſes by Spiritual perſons, 44 a & b vide Stat. 32 H. 8 cap. 28 & 13 Eliz. cap. 10.

Anno 27 Eliz. cap. 4. Of fraudulent Conveyances, &c. and who ſhall be ſaid a Purchaſor within this Statute, and who not, 3 b ¶ 290 b †.

Anno 27 Eliz. cap. 6. Of Jurors, 272 b *.

Anno 31 Eliz. cap. 6. Of Simony, and the expoſition of it, 120 a *.

¶ Stat. edit. temp. Regis Jacobi.

ANno 1 Jac. cap. 3. Of eſtates made to the King by Biſhops, 44 a † vide Stat. 13 Eliz. cap. 10 & 18 Eliz. cap. 10.

Anno 7 Jac. cap. 5 Of giving a ſpecial matter in evidence by the Kings officer, 283 a * vide Stat. 23 H. 8 cap. 5.

¶ Concerning Statutes in general.

RUles obſervable in the conſtruction of Statutes, 381 a ¶ b † *.

The preamble a good mean to find the meaning of a Stat. 79 a *.

The equity of a Statute, what, 24 b †.

Where caſes within the ſame miſchief, ſhall be taken within the ſame remedy of a Statute, 76 a ¶ 77 b † 290 b † 365 b * ¶.

Where a penal Statute ſhall be taken by equity, and where not, 46 b † 154 a * 238 a * 268 b *.

What ſhall be ſaid a Statute or act of Parliament, where the King only is mentioned, and what not, 98 a ¶ b †.

Where an Act of Parliament ſhall bind the King without being named, and where not, vide tit. Prerogative.

Where the Statute Law and Common Law meet, which ſhall be preferred, 49 a †.

Where a Statute ſhall be extended by equity to other perſons than are named therein, 290 a †.

Where a Statute ſpeaking of a Reverſion, ſhall

The Table.

extend to a Remainder, Et è converſo 280 b* 356 a*.

Where a Statute ſhall extend by equity to other actions than are mentioned, 54 b † 365 b †.

Where a Statute ſhall extend by conſtruction to another manner of title or conveyance, than is mentioned, 326 a 365 b*.

Where the generality of the words of a Statute ſhall be reſtrained by equity, and conſtruction made againſt the letter, 272 a* b † 290 a † * 360 a † 365 b ¶ 366 a † 381 b*.

Where the recital of a Statute in other words ſhall be good, and where not, 98 b*.

Where a Cuſtom or Preſcription may be alleaged againſt a Statute, and where not, vide tit. of Preſcription.

Where the grant of the King ſhall be good againſt a Statute, with the clauſe of Non obſtante, and where not, and where it ſhall be good without ſuch clauſe, vide tit. Prerogative.

¶ Statute Merchant and Staple, vide tit. Execution, Stat. Acton Burnel. Stat. de Mercatoribus, & 32 H. 8 cap. 5.

¶ Stethe ſeu Stede quid, 4 b.

¶ Steward.

The Etymology and ſignification of the word (Seneſchal,) 61 a ¶ b †.

The office and duty of a Steward of a Manor, 61 b †.

The retainer of a Steward of a Court good without Deed, ibidem.

In what Courts the Steward is Judge, and in what not, 58 a* vide tit. Courts.

¶ Stowe quid 4 b ¶.

¶ Surrender.

The deſcription of a Surrender, 337 b ¶.

The ſeveral kinds of Surrenders, 338 a †.

Where and how a future intereſt may be ſurrendred, 338 a*.

Where and of what things a Surrender ſhall be good without Deed, and where and of what not, 338 a* ¶.

Where the acceptance of a void eſtate ſhall be a ſurrender, 218 b*.

Where the feoffment of a particular tenant to him in the Reverſion or Remainder ſhall amount to a ſurrender, 42 a † 252 a*.

Where tenant for life and he in the reverſion joyn in a feoffment by parol, this ſhall be a ſurrender of the tenant, and the feoffment of him in the reverſion, 302 b ¶.

Where tenant for life make a leaſe for his own life to his Leſſor, the remainder to his Leſſor and a ſtranger in fee, this ſhall be a ſurrender for one moity, and forfeiture for the other, 335 a*.

Where and to what reſpects a particular eſtate after ſurrender ſhall be ſaid to have continuance and where, and to what not, 338 a ¶ b †*.

Where the acceptance of a ſurrender ſhall diſpence with waſte committed, vide tit. Waſt.

Where a ſurrender to one Joyntenant ſhall enure to both, 192 a ¶ 214 a †.

Where a ſurrender upon condition ſhall be good, 218 b*.

For ſurrender of Copyholds, vide tit. Copyholds.

Where a freehold and inheritance may be conveyed by ſurrender in Court, 59 b †.

¶ Suſpence.

The ſignification and derivation of the word, 303 a*.

Where a Seigniory or rent ſervice may be ſuſpended in part, and in uſe for part, and where not, 148 b †.

To what purpoſes a ſeigniory ſuſpended in part of the eſtate, ſhall be ſaid to continue, and to what not, 314 a †.

Where a thing in ſuſpence in the Anceſtor ſhall take effect by diſcent in his heirs, 313 a ¶ b † vide tit. Diſcent.

Where a thing in ſuſpence may be granted over, and where not, vide tit. Grants.

Where the husband ſhall be tenant by the courteſie of a thing in ſuſpence, and where not, vide tit. Courteſie of, &c.

Where the fruits of Knights ſervice ſuſpended the tenancy being in a Corporation, ſhall be reviſed again in the hands of a natural perſon, vide tit. Knights ſervice.

Where a warranty in ſuſpence ſhall hinder a Remitter, vide tit. Warranty.

Where the Debtor make the Debtee his Executor, the debt is in ſuſpence, 264 b ¶.

Where by the intermariage of a feme Executrix with the Debtor, the debt ſhall be in ſuſpence, ibidem.

Vide tit. Extinguiſhment.

¶ Tail.

The Etymology and derivation of the word (Tail) 18 b ¶ 22 a †.

The diviſion of eſtates Tail, 19 b*.

The deſcription of a tenant in general tail, 19 b ¶.

The deſcription of a tenant in ſpecial Tail, 20 b ¶.

What things may be entailed, and what not, 19 b ¶ 20 a † * ¶ 392 b ¶.

Where an eſtate Tail may be created without the word (heirs) 20 b † vide tit. Heirs.

Where it may be created without the word (Body) 20 b †.

Where without the word (Engendred) 20 b*.

What things incident to an eſtate Tail, 224 a †.

Where by a gift in Tail a reverſion is veſted in the Donor, 22 a ¶ b †.

Where the will of the Donor in eſtates tails ſhall be obſerved, and where not, 20 b † 21 a † 24 b * ¶.

Where a man ſhall inherit Per formam doni, which is not iſſue of the body of the Donee, 20 b* 28 b* ¶ 220 a*.

The tenure between ſuch Donor and Donee, and where the tenant ſhall hold as his Donor held over, and where not, 23 a*.

A gift to a man and a woman not married, or where one or both are ſeverally married, and to the heirs of their bodies a good Tail, 20 b ¶ 25 b ¶.

Where a man may convey an eſtate to himſelf in Tail, 22 b ¶.

A gift to a woman and two men, and the heirs of their bodies, how it ſhall enure, 25 b ¶ 184 a †.

A gift to two husbands and their wives, and the heirs of their bodies, how it ſhall enure, 25 b ¶.

The Table.

A gift to one and his heirs, to have to him, and the heirs of his body, Et e converſo, what eſtate, 21 a †.

A gift to a man and the heir of his body, Et uni hæredi ipſius hæredis, a good Tail, 22 a *.

Where the iſſue male inheritable per formam doni ought to convey himſelf by males, and the female by females, 25 a * ¶ 377 a †.

Where upon a gift the husband ſhall take in ſpecial Tail, and the wife nothing, or but for life, Et e contra, and where conſtruction ſhall be made according to the inclination of the words (heirs) 26 a per tot pag.

A gift to the husband and wife, and the heirs of the body of the ſurvivor, what eſtate, and when ſaid to veſt, 26 a ¶.

A gift to a man and his heirs of the body of ſuch a feme, a good tail, and they ſhall be entended to be gotten by the Donee, 26 b †.

A gift to a man and the heirs of the body of his father, a good Tail, ſecus of a gift to him and his heirs of the body, &c. 26 b * 27 a †.

A gift to a man and his heirs males, or females, a fee ſimple, ſecus of a deviſe, 178 a ¶ vide tit. Deviſe.

A gift to one and the heirs males of his body, with condition to revert if he die without heirs females of his body, a void condition, 164 a *.

A gift to a man, to have to him and the heirs males of his body, and to him and the heirs females of his body, how it ſhall be conſtrued, 377 a ¶.

Where and what Leaſes by tenant in Tail ſhall bind his iſſue at this day, and where and what not, 44 a b vide Stat. 32 H. 8 cap. 28.

Where a charge in fee by tenant in Tail upon the land, ſhall bind his iſſue, and where not, 343 b †.

A gift in Tail with condition to alien for the benefit of the iſſues, a good condition, vide tit. Conditions.

What actions in the realty tenant in Tail may have, and what not, 326 b ¶.

Where tenant in Tail ſhall be compelled to attorn, and where not, vide tit. Attornment, & Quid Juris clamat.

What act or conveyance was a bar to an eſtate Tail at the Common Law, and what at this day, 372 a ¶ b † vide Stat. 4 H. 7 cap. 24 & 32 H. 8 cap. 36.

Where a warranty ſhall be a bar to an eſtate tail, and where not, vide tit. Warranty.

Where an eſtate Tail may be barred at this day notwithſtanding a reverſion or remainder in the King, and where not, vide Stat 34 H. 8 cap. 20.

A recovery in a Writ of right or ceſſavit, no bar, 373 a.

A releaſe by tenant in Tail no bar to his iſſue of a warranty intailed, attaint, or writ of Error, 20 a ¶ 392 b ¶ 393 a †.

Where lands in Tail ſhall be forfeited for treaſon ſecus in a Præmunire, vide Stat. 26 H. 8 c. 13 & tit. Præmunire.

Where upon a recovery againſt tenant in Tail, Execution ſhall be ſued againſt his iſſue, and where not, vide tit. Recovery.

What act, &c. ſhall be a diſcontinuance of an eſtate Tail, and what not, vide at large in tit. Diſcontinuance & Entry congeable.

¶ Tail after poſſibility of iſſue extinct.

The deſcription of a tenant in Tail after poſſibility, and why ſo called, 27 b * 28 a †.

The privileges which ſuch tenant hath above thoſe of a Leſſee for life, 27 b ¶ 28 b ¶ 318 a ¶.

The qualities of his eſtate agreeing with thoſe of a Leſſee for life, 28 a †.

Where his Aſſignee ſhall not have thoſe privileges. 28 a * 316 a ¶.

By what means ſuch eſtate may be created and altered, and by what not, 28 a * ¶.

What perſons may be tenants after poſſibility, and what not, 28 b *.

¶ Taini & Tainland quid, 5 b * 88 a †.

¶ Tallage.

What perſons are freed by Law from Tallage, 31 a * 95 a * ¶.

¶ Tenant at will, and ſufferance.

The deſcription of a tenant at will, 55 a †.

What ſhall be ſaid a determination or countermand of the will of the Leſſor, and what not, 55 b ¶ 57 b †.

What ſhall be ſaid a determination in Law of the will of the Leſſee, and what not, 55 b ¶ 57 a * ¶.

What profit ſuch Leſſee ſhall have which come by his own manurance after the will determined, and what not, 55 b † 56 a ¶.

Where he ſhall have the corn, and where not, 55 a * b † *.

The remedy which he hath to come by the corn, or other goods after the will determined, 55 a * 56 a †.

Where a tenant at will ſhall be puniſhed for waſte, and where not, 57 a † *.

What remedy the Leſſor hath for a rent reſerved upon a Leaſe at will, 57 b †.

The difference between a Tenant at will by the Common Law, and by the Cuſtom, 62 b † * 63 a † * 93 b †.

Who properly ſaid to be a Tenant at ſufferance, 57 b * 271 a †.

Where the Termor continuing in poſſeſſion after his eſtate ended, ſhall be a Tenant at ſufferance, or a Diſſeiſor at the election of his Leſſor, 57 b *.

The difference between a Tenant at will and at ſufferance, ibidem.

Where a Gardein in Chivalry holding over his eſtate ſhall be an abator, 271 a *.

A releaſe to a Tenant at ſufferance void, vide tit. Releaſes.

¶ Tenants in Common.

Tenancy in Common deſcribed, and whence ſo called, 188 b.

Where a gift to two in their politick capacities, or to one in his politick, and another in his natural capacity, ſhall enure to them in Common, 189 b 190 a.

Where a man may be Tenant in Common with himſelf, and where with himſelf and another, 190 a ¶ 193 b †.

Where a Verdict finds that a man hath Duas partes manerii in tres diviſas, this ſhall not be intended in Common, ſecus were it dividenda, 90 b *.

Where Tenants in Common may be by preſcription, 195 a ¶ b †.

The Table.

Where and in what actions Tenants in Common shall ioyn, and where and in what they ought to sever, 195 b * 196 a † 197 a b 198 a b.
Where in an action by two Tenants in Common the release of one to the defendant shall go in benefit to his companion, 197 b ¶.
Where a ioynt action between Tenants in Common shall survive, and where not, 198 a † *.
Where in a Quare Impedit by two Tenants in Common, the death of one shall not abate the writ, vide tit. Quare Impedit.
Where Tenants in Common may make partition, and what partition between them shall be good, and what not, 98 b * vide Stat. 32 H. 8 cap 32.
Where Tenants in Common may be of Chattels, 198 a * b ¶ 199 a.
Where and what actions one Tenant in Common may have against his Companion, and where and what not, 199 b 200 a & b.
Where one Tenant in Common shall have an account against his Companion, and where not, vide tit. Accompt.
Where one Tenant in Common shall have an action of waste against his Companion, and where not, vide tit. Waste & Stat. West. 2. cap. 22.
Where two Tenants in Common ioyn in the grant of a Rent, how it shall be construed, vide tit. Grants.
Vide tit. Joyntenants.

¶ Tender and Refusal.

The signification of the word, (Tender,) 211 a ¶.
Where upon Tender of money, &c. a Refusal by the party shall be a perpetual bar to him for the same money, and where not, 207 a per tot. pag. 209 a ¶ b †.
Where a Tender and Refusal without Uncore prist shall be a good plea in Barr upon an Obligation, and where not, 207 a *.
Where a Tender of money in bags without telling or telling shall be sufficient, 208 a †.
Where a Tender and Refusal shall give a third person a title of entry or forfeiture, and where not, 209 a † *.
When no place is expressed in the Condition for payment of money or performance of other act, where Tender and performance ought to be made, 210 a ¶ b 211 a † b † 213 b * vide tit. Mortgage.
Notice not sufficient to cause the Lord to change his Avowry without Tender of the Arrerages, vide tit. Avowry.
Where after Tender and Refusal, the Lord shall not distrain his tenant for Homage until request, vide tit. Homage.
Tender of Mariage, vide tit. Mariage.

¶ Tenellare seu tenellare quid, 5 a *.

¶ Tenure.

The several acceptions in Law of the word (Tenere) 1 a †.
By a grant of all tenements what shall pass, 6 a † 19 b ¶ 154 a *.
Where the tenant might alien parcel of his tenancy before the Statute of Quia empt. terrarum, and where not, 43 a * vide Stat. Mag. Chart. cap. 32.
The division of Tenures, 95 a ¶.
The Tenure between the Donor and Donee in tail, since the Statute of Westm. 2 and how construed, 23 a 143 a †.
Where the special reservation of the party shall exclude the Tenure created by the Law, vide tit. Reservation.
What said to be a Tenure in Capite, and whence so called, 108 a * ¶.
Where a Tenure may be of the King as of his person, and no Tenure in Capite, 108 a ¶.
A Tenure by Coynage, what, 106 b ¶.
Tenure to be Vantrarius regis donec usus fuerit pari sortiarum pretii 4d. 69 b ¶.
Tenure to be a Hangman, 85 a a.
For other tenures see their peculiar titles.

¶ Testament.

The Etymology of the word, 312 b †.
Testamentum quid & quotuplex, 111 a †.
The favourable exposition of Testaments, 112 a ¶.
Where lands shall pass by Will nuncupative, and where not, 111 a *.
Where a warranty may be created by a Will, and where not, 386 a *.
At what age an Infant may make a Will, and at what not, 89 b *.
Where an Executor may release an action before probate of the Testament, vide tit. Executors.
Vide tit. Devise.

¶ Testimonies.

What person capable to be a witness, and what not, 6 a ¶ b †.
Where the witnesses shall be joyned to the Enquest, for the trial of a Deed, 6 b *.
Where a witness may be challenged, and where not, vide tit. Challenge.
Where a man may be challenged to be a witness, that cannot be challenged to be a Juror, & è contra, vide tit. Challenge, & Juror.
In what cases a woman admitted to be a witness, and in what not, 6 b ¶ 25 a ¶.
Where the party to the usurious contract shall not be a witness in an Information against an Usurer, 6 b ¶.

¶ Tillage.

The Commendation of Agriculture, and how respected in Law, 85 b † ¶.
How Husbandmen anciently were called, 5 b *.
The inconveniencies which come to the Commonwealth by converting tillage into pasture, 85 b †.

¶ Time.

What said to be Time of limitation, and the several sorts of it to several purposes, 114 b ¶ 115 a †.
The Time of limitation in actions anciently, and at this day, 115 a † vide Stat. Merton, cap. 8 Westm. 1 cap. 38 & 32 H. 8 cap. 2.
What said to be Time of memory, 113 b, 114 a 115 a *.
Where and to what purposes the Law hath limited

The Table.

a year and a day to be a legal, and convenient time, 254 b ¶.
Retainer of a servant generally, for what Time it shall be construed, 4 b †
Where no Time is limited for the performance of a condition, within what time it ought to be performed, and what shall be said a convenient Time, vide tit. Condition.
What Time sufficient to gain a name by reputation and what not, 3 b †.
Vide tit. Day.

¶ Tithes.

HOw they became Temporal inheritances, and the several remedies for them at this Day in the Temporal Courts, 15, a † vide Stat. 32 H. 8 cap. 7 & 2 & 3 E. 6 cap. 13.

¶ Title.

THe derivation and description of a Title, 345 b *.
The generality of the word, and how every right is a Title, but not e contra, 345 b * 347 b ¶ vide tit. Right.
Where by the release of a right, a Title is released, Et sic e converso, 345 b *.

¶ Travers.

WHere the party grieved shall have a Travers to an Office found; and where not, vide tit. Office, vide Stat. 2 E. 6 cap. 8.
Where a Travers shall be admitted upon a Travers, and where not, 282 b *.
Vide tit. Issue, & Pleading.

¶ Treason.

WHat lands forfeitable for Treason, and what not, vide Stat. 26 H. 8 cap. 13
Treason out of the Realm, how triable, vide tit. Trial, & Stat. 35 H. 8 cap. 2.
Where the party arraigned for Treason stand mute, he shall have judgment by attainder as if he were convicted, 391 a *.
An intent to murther the Queen Treason, 133 b †.
Vide tit. Attainder & Felony.

¶ Trespas.

TRansgressio quid, & unde, 57 a ¶.
Trespas quare consanguineum & hæredem cœpit, by whom it lies, and against whom, and against whom not, 84 a ¶.
Where it lyeth by the Copyholder against his Lord, 60 b ¶ 61 a †.
Where the Abbot and Monk shall have a Trespas for beating the Monk, 132 b ¶.
Where the Lessor shall have Trespas against his Lessee at will, or his Assignee before entry, 57 a * ¶.
No accessaries in Trespas, 57 a ¶.
Where a release to one Trespassor shall discharge his Companion, vide tit. Release.
Where upon every continuance in possession by the Disseisor after a continual claim, the Disseisee may have an action of Trespas, vide tit. Continual Claim.

¶ Trial.

TRial, quid & quoruplex, 124 b ¶ 125 a †.
The antiquity of Trial by twelve men, 155 b *.
How the Law delighteth in the number of twelve, 155 a *.
Trials otherwise than by a Jury of twelve men, 74 a ¶.
In trials from what place the Jury ought to come, and from what not, 125 a * ¶ b †.
Where upon issue of Heir, or not Heir, trial shall be where the birth is alleaged, and not where the Land lyeth, & e converso, 125 b *.
Upon issue quod Rex non conc. sic, &c. trial shall be where the Land lyeth, and not where the Letters Patents bear date, ibid.
When the matter extendeth into a place at Common Law, and a place within a Franchise, where it shall be tryed, 125 b *.
Where one Defendant plead to the writ, and the other to the action, which shall be tryed first, ibid.
Where the plea of one Defendant being to part, and the plea of the other to the whole, that which goeth to the whole shall be tryed first, and where not, 125 b ¶.
In Issue for part, and Demurrer for other part, which shall be tryed first, vide tit. Demurrer.
Where a matter alleaged out of the Realm may receive Trial, and how, 161 a * ¶ b vide Stat. 35 H. 8 cap. 3.
Where the original act is done within the Realm, and part out of the Realm, upon which issue is taken, how this shall be tryed, and whence the Jury shall come, 161 b * ¶.
How murder done in a forrein Country may be tryed and punished here, 74 a ¶ 161 a *.
Where one die within the Realm upon a wound given out of the Realm, how it shall be tryed, 74 b †.
Issue of Earl Baron, &c. or no Earl, &c. how triable, vide tit. Baron, & Nobility.
In what cases a Certificate shall amount to a Trial, 74 a *.
Where Trial of Plenarty shall be by the Common Law, and where by Certificate of the Bishop, vide tit. Plenarty.
Issue of Nul tiel Record, how triable, vide tit. Record.
How and by whom the reasonableness of a thing shall be tryed, 56 b * 59 b ¶ 62 a *.
Where a Nobleman being arraigned shall be tryed by his Peers, 156 b † 294 a ¶.
Vide tit. Challenge, Juror, & Verdict.

¶ Twaite quid, 4 b ¶.

¶ Vaccaria quid, 5 b *.

¶ Valuation.

THe Estate, Revenue, and Valuation, of a Duke, Earl, Baron, &c 69 a * ¶ 83 b †.
The revenue and Valuation of a Knight, 69 a † * 83 b †.

The Table.

The libelihood and Valuation of a Yeoman, 69 a ¶.

Where the Lord shall have the double Value of the marriage of the Heir, and where not, vide tit. Marriage.

What Value shall be paid to the King for Primer seisin, or upon Livery sued by the Heir, vide tit. Livery, & Primer seisin.

Where the wife shall be endowed, according to the improvement or decay of the Value of the husbands estate after his death, and where not, vide tit. Dower.

¶ Ventre inspiciendo.

The form of such writ, and where it lyeth, 8 b † *.

¶ Verdict.

The signification and derivation of the word, 226 a ¶.

The several kinds of Verdicts, 226 b † 227 b * 228 a *.

The form of a general Verdict, 226 b *.

Where a special Verdict may be found upon a single point in issue, 226 b ¶.

A Verdict finding a matter incertainly not good, 227 a †.

Where a Verdict find part of the issue, and nothing for the residue, it shall be insufficient for the whole, secus, where it finds more than the issue, 227 a * ¶.

Where the substance of the issue is found, the Verdict is good, notwithstanding any omission of circumstance. vide tit. Issue.

Where an Estoppel or a warranty may be found by Verdict 227 a ¶.

Where the Jury may vary from their Verdict, and where not, 227 b † *.

Where a Verdict found against the letter of the issue shall be good, and where not, 114 b *.

Where the delivery of a letter, or other writing of evidence to the Jury after their departure from the bar, shall avoid the Verdict, and where not, 227 b †.

Where the Jury may give a privy Verdict, and where not, 227 b *.

A Jury sworn and charged in case of life and member cannot be discharged before Verdict. ibid.

In what actions, and upon what issues, a special Verdict may be given, 227 a † b *.

Where a general Verdict in a matter in Law shall be good, 228 a ¶.

Where and upon what Verdict an Attaint lyeth against the Jury, and where, and upon what not, vide tit. Attaint.

Vide tit. Issue, & Trial.

¶ Village.

The description of a Village, and whence so called, 115 b ¶.

What Custom may be alleaged within a Village, and what not, vide tit. Custom.

Where the Village or Town shall be said in Law to continue notwithstanding the decay of the houses, 115 b ¶.

The number of Towns in England and Wales, 116 a †.

Every Village a Borough, but not è converso, 115 b ¶.

Where Nul tiel ville is pleaded, whence the Jury shall come, 125 b †.

Where the Jury shall come out of the Parish or Manor, and not out of the Village, & è contra, vide tit. Manor, & Trial.

Vide tit. City.

¶ Villeinage, and Villein.

The Etymology of the word, 116 a †.

The description of a Tenure in Villeinage, 116 a.

How Villeins were anciently called, 116 a †.

How Villeinage first began, 116 b *.

Where a free man may hold in Villeinage, 116 a ¶ b † 117 b †.

The divers kinds of Villeines, 117 b ¶ 120 a ¶.

What inheritances or other things of a Villein, his Lord shall have, and what not, 117 a *.

Where a Lessee at will, for years, &c. shall have the Perquisite of his Villein in fee, 117 a * 124 a ¶ b †.

In what right a Bishop, &c. shall be said seised of the Perquisite of his Villein, 117 a * 124 b †.

Where by the entry of the Lord upon his Villein Tenant in tail, his issue shall be barred for ever, 117 a *.

Where an Alienation, Escheat, or Dissent of the lands of a Villein, shall bar the title of his Lord before Entry, 118 a b †.

Where a Disseisin to the Villein shall prejudice the Lord of his Entry, and where not, 118 b *.

What shall be said a sufficient claim or seisure by the Lord, to vest in him the properties of his Villeins goods, and what not, 118 b ¶ 145 b † 263 a ¶ vide tit. Continual Claim

Where Laches of entry or seisure shall not prejudice the King of the Lands or goods of his Villein, 118 a * 119 b †

Where the inheritance of a Villein shall be said in his Lord before Entry or Claim, and where not, 118 a 119 b †.

Where the Lord may justifie his Entry into Land, to make claim to a reversion, or other profit of his Villein, 119 a ¶ b †.

What shall be said a sufficient Claim by the Lord, to vest in him the Advowson of his Villein, and what not, 119 b * 120 a † *.

Villein regardant described, and whence so called, 120 b †.

Who said to be a Villein in gross, 120 b *.

How a man ought to prescribe in a Villein regardant, and how in a Villein in gross, 121 a vide tit. Prescription.

What confession in a Court of Record shall make the party a Villein, and what not, 112 b *.

Where the father is a Villein, and the mother free & è contra, how their issues shall be reputed in Law, 123 a † *.

A Bastard no Villein, unless by his own confession, 123 a ¶.

Where and what Actions a Villein or Neife shall maintain against their Lord, and where, and what not, 123 b 124 a 126 b †.

What acts, &c by the Lord shall be an Infranchisement to his Villein, and what not, vide tit. Manumission.

In what cases the Villein shall be privileged against the seisure of his Lord, albeit he is not infranchised, 136 a ¶ b † 137 b *.

Where

The Table.

Where an Action lyeth by the Lord against the husband for marrying his Neife, and where not, 136 a * b *.

Where and what charges of the Villein upon his Land are avoidable by the Lord after Entry, and where and what not, 184 b ¶.

Where and by what mean the Lord may be disseised or dispossessed of his Villein, and by what not, 306 b * ¶ 307 a †.

Where the Disseisee may seise his Villein regardant before re-continuance of the Manor, to which, &c. and where not, 107 a †.

Where a stranger, by the acknowledgment of the Tenant in a Per cipe, to be his Villein, shall be said actually seised of the Freehold and Inheritance without Entry, vide tit. Freehold.

¶ Virgata terræ quid, 5 a ¶ 69 a *.

¶ Voucher.

The Etymology and signification of the word, 101 b †.

The several sorts of Vouchers, 101 a †.

To what things it extendeth, and to what not, vide tit. Warranty.

The several Proceis against the Vouchee, and upon what default after Proceis Judgment shall be given against the tenant, and upon what not, 101 b ¶ 393 a *.

Where upon judgment given against the Tenant, he shall have judgment over against the Vouchee, and where not, 101 b ¶ 393 a *.

Where the Tenant after he hath been impleaded, and judgment given, shall have a Warrantia Chartæ, or vouch again, and where not, 102 a † 393 a *.

Where the warranty descend upon the Heir at Common Law and the Land to a special Heir, the Tenant may vouch both, 376 a ¶ b †.

Where the special Heir shall joyn with the Heir at Common Law, to deraign a warranty Paramount, and to whom the Recompence in value shall enure, 376 b † *.

Where a Bastard shall be vouched by reason of the warranty of his father, vide tit. Bastard.

Where and how a man or his Assignee may vouch, by reason of a warranty annexed to a Release or Confirmation where nothing passed, 365 a ¶ b † vide Stat. W. 1 cap. 40.

Where a man may vouch himself by reason of a warranty, 390 a † 384 b ¶.

Where the wife being received shall vouch her husband, & è converso the husband himself and his wife, albeit the warranty be in suspence, 390 a *.

Where and how an Infant in ventre sa mere may be vouched, 390 a ¶.

Where the Feoffee may vouch as of Lands discharged of a Rent charge or Seck, secus as of Lands discharged of a Rent service, 388 b ¶ 389 a †.

Where a Purchaser shall vouch as Heir, 384 b ¶.

Where a man shall vouch as Assignee, and who shall be said an Assignee to take advantage of a warranty by way of Voucher, and who not, vide tit. Warranty.

Vide tit. Recovery in value, & Warranty.

¶ Uses.

The definition of an Use, 271 b *.

The several ways whereby Uses may be raised, 271 b ¶.

Where there may be two Uses in esse of the same Land at the same time, and where not, 271 b ¶ 272 a †.

What persons may be seised to the Use of others, and what only to their own Use, 19 b *.

What shall be said a sufficient consideration of blood to raise an Use, and what not, 123 a ¶ 237 a *.

Where Uses shall ensue the nature of the Land, 23 a †.

Where a power to revoke Uses shall be good, and what revocation by reason of such power shall be good, and what not, vide tit. Revocation.

Where by the same conveyance, an old Use is reborn, a new may be created, 237 a *.

Where a Feoffment is made to the Use of a last will, or of such persons as shall be named in a last will, in whom the use shall be said to repose in the interim, 111 b ¶ 112 a † 271 a ¶ b.

How the intent of the parties shall operate in the raising and direction of uses, vide tit. Intention of, &c.

Where the Heir of Cestuy que use shall be in ward, and pay relief, vide Stat. 4 H. 7 cap. 17 & 19 H. 7 cap. 15.

Vide Stat. 27 H. 8 cap. 10.

¶ Usurpation.

The several acceptions of the word, and how it differeth from a Disseisin, intrusion, &c. 277 a ¶ b †.

Vide tit. Presentation, & Quare Impedit.

¶ Wager of Law.

Wager of Law what, and the manner of it, and whence so called, 294 b ¶ 295 a †.

Where it lyeth, and in what actions, and where and in what not, 172 b † 295 a per tot. pag.

Where the husband and wife shall wage their Law for the debt of the wife before Coverture, 172 b †.

What persons may wage their Law, and what not, 172 b † 295 a † *.

Where a man shall wage his Law of another mans deed, and where not, 295 a ¶.

¶ Wales.

The Etymology of the word, 175 b ¶.

The Principality of Wales holden anciently of the Crown of England, 97 a ¶.

¶ Wardship.

Where the Heir of the Disseisee shall be in ward before recontinuance of his estate, 76 b ¶ 270 a †.

Where the Heir shall be in ward, albeit his Ancestor died not seised, nor within the Homage of the Lord, 76 b † *.

Where by the determination of the Estate or Tenure of the Heir, the wardship shall cease, 76 a † b ¶ ¶ 248 a ¶.

Where the Heir being remitted, or recovers in a Formedon

The Table.

medon, or Non compos mentis, &c. shall be in ward, 76 b †.

Where the Lord shall have a double wardship for the same Land, 76 b ¶.

Where the Heir of Tenant in Tail shall be in ward, notwithstanding a Discontinuance, and to whom, 76 b ¶ 77 a † 78 a †.

Where the King, by reason of wardship, shall have the custody of lands holden of other Lords, and inheritances which lye not in Tenure, and where not, 77 a †.

Where the Heir at this day shall be in ward, notwithstanding a conveyance over by his father in his life, and where not, 78 a per tot. pag. vide Stat. 32 H. 8 cap 1.

Where the Heir shall be in ward upon a conveyance by his Ancestor, for the advancement of his wife or children, or payment of his debts, and where not, 78 a per tot. pag.

Where a conveyance by the Grandfather to the Son, shall cause a wardship, and where not, 78 a ¶.

Where the Son shall be in ward, albeit nothing descend, 78 b †.

Where the Lord shall have the wardship of the Land, notwithstanding the mariage of the Heir in the life of his Ancestor, 75 a ¶ 79 a †.

Where the Lord shall have both wardship and Relief of the same Heir, and where neither, vide tit. Relief.

Where a man hath a double title to wardship, one as Father, and the other as Garnein in Chwalry, or Socage, in which he shall be said to be in, 84 b † 88 b *.

Where the Heir of Cestuy que use shall be in ward, vide Stat. 4 H. 7 cap. 17.

Where the Heir of a Tenant in Socage shall be in ward, 76 a *.

Where a wardship may be granted without Deed, and where not, 85 a per tot. pag.

Vide tit. Mariage.

¶ Wardwite quid, 83 a ¶.

¶ VVarranty.

The description of a warranty, 365 a †.

The several kinds of warranties, 364 b ¶ 365 a *.

To what things a warranty may extend or be annexed, and to what not, 101 b * 366 a ¶ b † 389 a † *.

Upon what conveyances a warranty may be created, and upon what not, 371 a ¶ b † 386 a *.

What words are requisite to the creation of a warranty in Deed, 383 b 384 a †.

Where the word (heirs) requisite to the creation of a warranty of inheritance, and where not, 47 a * 378 a ¶ 383 b * 384 b * ¶ 385 b *.

Where no person is mentioned in the clause of warranty, to whom it shall be intended, 383 b *.

What words shall amount to a warranty in Law of a Freehold or Chattel, and to what Estate a warranty in Law is said to be annexed, and to what not, 384 a * ¶ b †.

Where the word (heirs) implyed a warranty of inheritance at the Common Law, and where only for the life of the Donor, 384 a *.

Where a warranty express shall not take away a warranty in Law, 384 a ¶.

The description of a warranty which commence by Disseisin, and why so called, 366 b †.

Where a warranty, albeit the Disseisin be mediate or to another person, shall be said to commence by Disseisin, and shall not bar the Heir, a * 366 b ¶ 367 a †.

Where a warranty annexed to a Feoffment many years after the Disseisin shall be said to commence by Disseisin, and where not, 367 a * 369 b ¶ 371 a *.

Where a warranty upon a Feoffment to Barretors or Extortioners, whereby the Tenant waves the possession, shall be said to commence by Disseisin, 368 a ¶ 369 b *.

Where a third person shall take advantage of a warranty commenced by Disseisin to another, 367 a †.

A warranty commencing by Intrusion, Abatement, &c. no bar, 367 a ¶.

Where a warranty annexed to a Feoffment de facto shall bind the parties, and be good against all but him that right hath, 367 a * b †.

The description of a lineal warranty, and why so called, 370 a * ¶ 371 a * 375 a ¶.

Where a warranty lineally descending shall be collateral, 370 b ¶ 371 a † 374 b ¶ 376 a † 379 b ¶.

Where a warranty collaterally descending shall be lineal, 370 a ¶ 371 b † ¶.

Where the same warranty shall be collateral in respect of some persons, and lineal in respect of others. 371 b ¶ 372 a †.

Where a warranty shall be lineal to the Heir, albeit he conveyeth not his Discent from him that made the warranty, 371 a ¶ b ¶.

Where a lineal warranty shall be a bar to a Fee simple, but not to an Estate tail without Assets, 374 a † * b † 393 b * vide tit Assets.

Where Baron and Feme Tenants in special tail discontinue, the warranty of either shall be lineal to the Issue, and no bar, 375 a † *.

Where and why a collateral warranty shall be a bar to an Estate tail, and the reversion of the Donor, 373 a ¶ 374 b † *.

Where a warranty shall bar a future right, 265 a ¶.

Where a warranty descending in one right, shall bar the Heir claiming in another, jecus of an Estoppel, 365 b * vide tit Estoppel.

Where a collateral warranty shall not bar a right by succession, 370 a ¶ b †.

No bar to a title of entry, 379 b † 389 a *.

Where a warranty descending upon an Infant or Feme covert shall be a bar, and where not, 380 a ¶ b †.

Where the warranty of Tenant by the Courtesie shall be a bar to the Issue at this day, and where not, and what remedy the Heir or his Issue hath against the Alienee, 379 b * ¶ vide Stat. Glocest. cap. 3.

Where the warranty of the husband, being not Tenant by the courtesie, shall be a bar to the Issue of the wife, and where not, 366 a *.

Where the warranty of Tenant in Dower was a bar at the Common Law, and how restrained at this day, 365 b * ¶ 374 b ¶ 380 a † 381 a † vide Stat. 11 H. 7 cap. 20.

Where the King shall be barred of a right or possibility of Reverter by the Collateral warranty of a subject, and where not, 19 b † 370 b †.

Where a warranty descending upon the wife, shall hinder her disagreement to an Estate made during the Coverture, 380 b *.

Where a collateral warranty descending upon the Issue in tail before the Discent of the right shall be a bar to him, and where not, 388 a ¶ b †.

Where a warranty shall bar, albeit the estate was was not put to a right at the time of the warranty made, and where not, 388 b * ¶ 389 a †.

A collateral warranty no bar in a Writ of Dower, or Cessa matrimonii prælocuti, 389 a *.

Where

The Table.

¶ Where Tenant in tail to him and his Heirs males, the remainder to him and his Heirs females diſcontinue with warranty, ſuch warranty is lineal to both, and ſhall bar neither, 377 a

¶ Where after a Diſcontinuance a warranty deſcending upon two daughters, where one only is inheritable to the Eſtate, ſhall be a bar to the daughter inheritable for the whole, 373 b *.

¶ Where Tenant in tail dye having two daughters, and one enter and make a Feoffment with warranty, this ſhall bar the other ſiſter, as to her part, but not as to the part of the Feoffor, 373 b 374 a.

¶ Where a warranty ſhall deſcend only to the Heir at the Common Law, 370 a * ¶ 386 a ¶ b 387 a †.

¶ Where two brothers being by divers venters, the eldeſt releaſe with warranty to the Diſſeſſor, of the Uncle, and dye without iſſue, after the death of the Uncle, the Entry of the younger is congeable, notwithſtanding the warranty, 387 a *.

¶ Where the father upon a mediate Diſcent ſhall not be bound, or take advantage of a warranty made by or to the ſon, 11 b ¶ 12 a †.

¶ Where the Heir ſhall be bound to a warranty, to which his Anceſtor never was, and where not, 385 b ¶ 386 a †*.

¶ Where a ſpecial Heir ſhall be vouched, by reaſon of the warranty of his Anceſtor, vide tit. Voucher.

¶ Where the ſpecial Heir ſhall joyn with the Heir at the Common Law, to deraign a warranty Paramount, and how the recompence in value ſhall enure, vide ibidem.

¶ Where by warranting the land, all rents, &c. ſuſpended or diſcharged at the time, are alſo warranted, and where not, 366 b † 388 b ¶ 389 a †.

¶ Where notwithſtanding lands eſpecially bound to warranty, the perſon alſo of the Feoffor ſhall be bound, 102 b †.

¶ Where the condition of an Obligation is to defend the lands of the Obligee, by an ouſter of a ſtranger the condition is broken, ſecus of a condition to warrant the lands, &c. 384 a †.

¶ Where a warranty may be defeated in part, and ſtand good for other part, 367 b * 393 a ¶.

¶ Where a warranty made by an Infant and one of full age, ſhall be void againſt the Infant, and good for the whole againſt him of full age, 367 b ¶.

¶ Where a Leaſe for life is made upon condition to have Fee with a warranty in forma Prædict. by the increaſor of the Eſtate the warranty ſhall increaſe, ſecus of a Leaſe for years upon ſuch condition, 378 a ¶.

A Leaſe for years, the Remainder in Fee with warranty in Forma prædict. ſuch warranty void to both, 378 b †.

A Leaſe to two, the Remainder to him that firſt die with a warranty in Forma prædict. by the death of one his Heir ſhall have the warranty 378 b †.

¶ Where Lands by purchaſe ſhall be liable to execution in value, in caſe of a warranty by Diſcent, and where not, 162 a ¶.

¶ Where upon a warranty for life the recovery in value ſhall be in fee, and where but for life, 383 b * 387 a ¶.

¶ Where an Aſſignee ſhall take advantage of a warranty in Law, and where not, and where by way of Voucher, and where only by Rebutter, 384 a ¶ b †.

¶ Where a warranty in Law and Aſſets ſhall be a good bar in a Formedon, 384 b *.

¶ What perſon ſhall take advantage of a warranty in Deed, as Aſſignee by way of Voucher, and what not, 384 b * ¶ 385 a * b † 390 a †.

¶ Where an Aſſignee of part of the Land or Eſtate, ſhall vouch as Aſſignee, and where not, and by what means he may take advantage of the warranty, 385 a *.

¶ Where a gift in tail is made with warranty to the Donee, his Heirs and Aſſignes, who make a Feoffment and dye without iſſue, the Feoffee ſhall not vouch or rebutt, ſecus of ſuch a gift before the Stat. of Donis, &c. 385 a ¶.

¶ What perſons may take advantage of a warranty by way of Rebutter, and what not, vide tit. Rebutter.

¶ Where a warranty may be raiſed upon a Releaſe or Confirmation where nothing paſs, and where the party ſhall take advantage of ſuch warranty by way of Voucher, and where not, 371 b † 385 a ¶ b † 387 a * vide tit. Voucher.

¶ Where a warranty ſhall not amend or enlarge an Eſtate, 385 b †.

¶ Where the Eſtate being avoided before or after the warranty deſcended, the warranty annexed is defeated alſo, 366 a † 367 b ¶ 388 b * 389 a * ¶ & b †.

¶ Where by a re-feoffment to the Feoffee, a warranty to the Feoffee, his Heirs and Aſſignes is defeated, ſecus of a Feoffment to the Feoffor and his wife, 380 b ¶ 390 a †

¶ Where ſuch Feoffee infeoffe one of his Feoffors, the warranty continues, 390 a †.

¶ Where a Leaſe for life or gift in tail to the Feoffor ſhall be a ſuſpenſion of the warranty during the Eſtates, 390 a *.

¶ Where a ſuſpended warranty and Aſſets deſcending upon the Iſſue in tail, together with the Lands diſcontinued ſhall hinder a Remitter, 390 a ¶ b †.

¶ Where by Attainder of Felony or Treaſon, a warranty ſhall be defeated, 390 b * 391 b † *.

¶ Where Tenant in tail releaſe to his Diſſeſſor with warranty, and after is attainted and pardoned, the warranty ſhall be void as to his Iſſue before the pardon, but a bar to his Iſſue born after, 391 b ¶ 392 a *.

¶ Where a Seigniary is granted with warranty by the Eſcheat of the Tenancy, the warranty is defeated, 392 b *.

¶ Where a collateral Anceſtor or releaſe with warranty, and enter into religion by his deraignment after the warranty is defeated, 392 b *.

¶ What words in a releaſe ſhall extinguiſh a warranty, and what not, 291 b * 392 b ¶ vide tit. Releaſes.

¶ Where after a Releaſe of the warranty to one Feoffor, the Feoffee ſhall vouch the other for a moity, the ſame where one Joyntenant releaſe his Companion may vouch 393 a †.

¶ Where a man ſhall vouch himſelf by reaſon of a warranty, and where the wife the huſband, &c converſo, vide tit. Voucher.

¶ Where there ſhall be two Recoveries in value upon one warranty, and where not, 393 a * ¶.

¶ Where a warranty lineal and Aſſets deſcending upon the Iſſue in tail, ſhall be no bar to his Iſſue after alienation of the Aſſets, ſecus if the Iſſue had been barred in a Formedon, by reaſon of ſuch warranty and Aſſets, 393 b *.

¶ Where the Tenant by reaſon of a warranty ſhall have a Scire facias, for Aſſets deſcending ſince the recovery, and where not, vide tit. Scire facias.

¶ Where upon ſuch Scire facias the Tenant ſhall recover the Land loſt, and where the Aſſets deſcended, vide ibidem.

¶ Where a warranty ſhall work a diſcontinuance, and where not, vide tit. Diſcontinuance.

Vide tit. Recovery in value, & Voucher.

¶ Warrectum ſeu Warrectum terræ quid, 5 b †

r ¶ V Var-

The Table.

¶ Warren, vide tit. Foreſt.

¶ War.

What ſhall be ſaid the time of peace and what the time of war, and how it ſhall be tryed, 249 a ¶ b †*.
Where a Diſcent in time of war ſhall not toll an Entry, vide tit. Entry Congeable.
Where an uſurpation in time of war ſhall not put the Patron out of poſſeſſion, vide tit. Preſentation.
The ancient manner of ſerving the King in his war, 71 a*.
Natives more ſerviceable for the war than ſtrangers, 69 a †.
Rules and obſervations in Art Military, 71 a †.

¶ Waſte.

The Etymology of the word, 52 b ¶.
The divers kinds of waſte, 53 a* ¶ b*.
The ſeveral writs of waſte, 54 a ¶.
Againſt what perſons an Action of waſte lyeth, and againſt what not, 53 a † b ¶ 54 a.
What ſhall be ſaid waſte in houſes, 53 a ¶ b*.
Where deſtruction of fruit trees ſhall be waſte, and where not, 53 a*
What ſhall be ſaid waſte in a Park, Dove-houſe, &c. 53 a ¶.
What ſhall be ſaid waſte in trees, and in what trees waſte may be done, 52 a ¶.
Where digging of gravel, mine, &c. ſhall be waſte, and where not, 53 b † 54 b*.
The ſuffering of Land to be ſurrounded, waſte, 53 b †.
Converſion of arable Land into wood, & è contrà, waſte, 52 b †.
What ſhall be ſaid waſte in fences, 53 b †.
What waſte in Hominibus, 53 b*.
How waſte, deſtruction, and exile differ, 53 a ¶ b*.
By what perſons an Action of waſte lyeth, 53 b ¶.
Where the Heir ſhall have an Action for waſte done in the life of his Anceſtor, and where not, 53 b ¶ 198 a ¶.
What ſhall be ſaid a good plea in an Action of waſte, and what not, 53 a* b † 54 b* 285 a †*.
Where by the alteration of the Reverſion, waſte committed before ſhall be diſpunishable. 53 b ¶.
Againſt what perſons a prohibition of waſte lay at the Common Law, and againſt what not, 53 b ¶ 3 6 a*.
Where waſte lies againſt Tenant by the Courteſie, or in Dower after Aſſignment, and where not, 54 a † 316 a*.
Where an Action lyeth againſt the Aſſignee, for waſte done before the Aſſignment, and where not, 54 a †.
Where the Tenant ſhall be puniſhed for waſte done by a ſtranger, and where not, ibid.
Where the wife ſhall be puniſhed for waſte done in the life of her husband, & è converſo, 54 a*.
Where an Occupant ſhall be puniſhed for waſte, 54 a*.
Where a mean remainder or reverſion ſhall be an impediment to bring an Action of waſte, and where not, 54 a* 273 a ¶ 291 b ¶ 338 b*.
Where waſte lyeth againſt a Gardein in Chivalry, and the penalty in ſuch action, 54 a †.
Deſtruction to what value ſhall be ſaid waſte, 54 a ¶
For Waſte ſparſim all the Land ſhall be recovered, 54 a ¶.
Where Tenant for life ſhall joyn in an Action of waſte. 42 a* 53 b ¶.
Where one Joyntenant, or Tenant in Common for life or in fee, ſhall have an Action of waſte againſt his Companion, and where not, 200 b* vide Stat. W. 2 cap. 23.
What intereſt is given to the Leſſee by the clauſe (without impeachment of waſte,) 220 a †.
Where the Leſſor recovering in an Action of waſte, ſhall avoid all mean eſtates and charges made by the Leſſee, and where not, 233 b, 234 a †.
Where the Heir ſhall have an Action for waſte done in the life of his Anceſtor, which the Anceſtor himſelf could not, 247 b*.
Where the acceptance of a ſurrender by the Leſſor after waſte done, ſhall conclude him of his Action of waſte, 285 a*.
Where in an Action of waſte by Tenants in ſpecial tail, the death of one without Iſſue ſhall abate the writ, 285 a ¶ vide tit. Writs.
Where a Parſon, Vicar, &c. ſhall have an Action of waſte, 341 a ¶ vide tit. Parſon.
Where by the Releaſe of him in the remaind. in tail to Tenant for life of all his right he ſhall not have an Action of waſte, ſecus where he in the Reverſion in Fee make ſuch Releaſe, 345 b ¶ vide tit. Releaſe.
Where Tenant in tail leaſe for his own life, an Action of waſte lyeth againſt the Leſſee, 345 b ¶.
In waſte the place waſted the principal, and not dammages, 158 a ¶ 355 b † ¶.
Where in an Action of waſte by two, the Releaſe of one ſhall bar the other, and where not, 355 b † ¶
Where in an Action of waſte, ſummons and ſeverance lyeth, and where not, 355 b ¶.
Where upon a recovery by default in waſte, a writ of Diſceit, or Quod ei deforceat lyeth, vide tit. Quod ei deforceat.
Where upon a verdict in waſte no attaint lyeth, Vide tit. Attaint.
Where an Action of waſte lyeth, albeit the Leſſor had nothing in the Reverſion, at the time of the waſte committed, 356 a ¶.
Where Riens en le reverſion ſhall be a good plea by the Leſſee in an Action of waſte, and where not, 356 a*.

¶ Way.

The ſeveral kinds of ways, 56 a*.
What remedy for a diſturbance in a publick or private way, and what not, 56 a †.

¶ Wera & Were quid, 127 a* 287 b ¶.
¶ Wit ſeu Wita quid, 127 a †.

¶ Witneſs, vide tit. Teſtimonies.

¶ Woodgeld quid, 233 a ¶.
¶ Worſcot quid, 71 a †.
¶ Worth quid 5 b ¶.

The Table.

¶ Writs.

BRitt unde, 73 b †.
The deſcription of a writ, 73 b *.
The ſeveral ſorts of Writs, 73 b * ¶.
The difference between a writ and an Action, vide tit. Action.
What writs may be maintained quia timet before any moleſtation, 100 a *.
Where the writ ſhall be general, and the count ſpecial, 26 b ¶ 53 a † 54 b † 235 b † 344 a †.
Upon what plea to the diſability of the perſon the writ ſhall abate, and upon what not, 133 b ¶ 134 a † 135 b *.
Where an Action well begun determineth in part by the Act of Law, the writ as to the whole ſhall abate, and where not, 285 a * ¶.
Where the profeſſion of the Tenant or Defendant in Religion pendente placito ſhall not abate the writ, 248 b ¶.
Where the deprivation of the Defendant ſhall abate the writ, ſecus of a Reſignation, ibid.
Where the Diſſeiſin of the Tenant in a Præcipe, by the Demandant to the uſe of others, ſhall not abate the writ, vide tit. Diſſeiſin.
Where the death of one Plaintiff in a Quare Imp. ſhall not abate the writ, vide tit. Quare Imp.
Where an Amerciament ſhall be due for the abatement of a writ, and where not, vide tit. Amerciament.
Where ſeveral writs of cuſtoms and ſervices lie for the deforcement of one and the ſame ſervice, 154 a †.
Where two joyning in a grant of an annuity, the Grantee ſhall have ſeveral writs, and where but one, vide tit. Annuity.
In what places and Counties writs ought to be brought, vide tit. Action.
Writ de ingreſſu, ſive aſſenſu Capituli, whence ſo called, and where it lyeth, 325 b *.
The writ ex gravi querela, where it lyeth, 111 a ¶.
De domo reparanda, where it lyeth, 56 b † 200 b †.
For other writs, vide their proper titles.

Dedit Deus his quoque finem.

Ex. J. M. 12/1/04